UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 24, 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 AUGUST 17, 2009 AT 9:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 3, 2009, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 10, 2009. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING, AND OF THESE DEADLINES.

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

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

MATTERS FOR ARGUMENT

1. 09-32900-A-7 PACIFIC FIRST LINDEN ROAD HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 7-2-09 [8]

Tentative Ruling: The case will be dismissed.

The debtor failed to file a master address list with the petition as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. The deadline for filing the list has expired and the notice of the commencement of this bankruptcy case was served on or about July 7. Because no master address list had been filed, the notice was not served on all creditors. As a result, they were not notified that the case had been filed nor did they receive notice of the various deadlines for filing complaints, objecting to exemptions, and filing proofs of claims. To permit the case to remain pending would be unfair to all creditors. Accordingly, the petition will be dismissed.

2. 09-28401-A-7 BETH MIRANDA HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 7-2-09 [11]
WGM #1
BAC HOME LOANS SERVICING LP, VS.

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

The motion will be granted.

The movant, BAC Home Loans Servicing, seeks relief from the automatic stay as to real property in Williams, California. The property has a value of $190,000 and it is encumbered by claims totaling approximately $352,539. The movant's deed is in first priority position and secures a claim of approximately $285,540.

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 June 3, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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. 09-31703-A-7 RUBY HOGAN

HEARING - MOTION FOR AN EXEMPTION FROM, OR AN EXTENSION OF TIME TO OBTAIN, A CREDIT COUNSELING BRIEFING
6-12-09 [10]

Tentative Ruling: The motion will be granted.

The debtor moves for an exemption from or extension of time to obtain the required credit counseling briefing. She has attached a letter from her doctor, dated June 11, 2009, explaining that the debtor has pneumonia and congestive heart failure impairing her ability to obtain the briefing on the telephone or the computer "until about 7/10/09."

Section 109(h)(4) provides for an exception of the counseling requirement in the event of incapacity, disability, or service in the military. Given the debtor's pneumonia and congestive heart failure conditions, as reflected by the letter from her doctor, the court concludes that the debtor is incapacitated for purposes of section 109(h)(4). The court will extend the time for the debtor to obtain credit counseling until July 31, 2009. The motion will be granted.

4. 09-27008-A-7 TROY AGUERO AND CHRISTINA WESTERLUND
ABG #1
KINECTA FEDERAL CREDIT UNION, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-15-09 [14]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Kinecta Federal Credit Union, seeks relief from the automatic stay with respect to a 2004 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 April 14, 2009 and a meeting of creditors was first convened on May 20, 2009. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than May 14. 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 May 20, 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 June 19, 2009, 30 days after the meeting of creditors.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on May 20, 2009, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on June 19, 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.

5. 09-31409-A-7 AMANDA DAMRON HEARING - MOTION FOR
KAT #1 AND JOHN DAY RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK TRUST CO. AMERICAS, VS. 7-8-09 [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, Deutsche Bank Trust Company Americas, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $192,000 and it is encumbered by claims totaling approximately $392,595. The movant's deed is in first priority position and secures a claim of approximately $360,933.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 15, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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. 09-31809-A-7 LEE JOHNSON, SR. HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-30-09 [19]

Tentative Ruling: The case will be dismissed.

11 U.S.C. § 521(a)(1) and Fed. R. Bankr. P. 1007(b) & (c) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts, and a statement of current

monthly income no later than 15 days after the filing of the petition. The 15-day period has expired and the debtor has failed to filed Schedules C, E, F, the statement of financial affairs, and the statistical summary. By failing to file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

7. 09-24910-A-7 LISA BOLTON
KAT #1
GOLDEN 1 CREDIT UNION, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-29-09 [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 in part and dismissed in part.

The movant, The Golden One Credit Union, seeks relief from the automatic stay as to real property in Folsom, California.

Given the entry of the debtor's discharge on June 29, 2009, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $250,000 and it is encumbered by claims totaling approximately $361,023. The movant's deed is in first priority position and secures a claim of approximately $312,016.

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 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

8. 09-29312-A-7 STEPHEN/DONNA MYERS
KAT #1
U.S. BANK N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
7-1-09 [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, U.S. Bank, seeks relief from the automatic stay as to real property in Ione, California. The property has a value of $255,000 and it is encumbered by claims totaling approximately $292,134. The movant's deed is in first priority position and secures a claim of approximately $235,896.

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 June 22, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

9. 08-35814-A-11 FERNANDO/ESTELA ESTRADA
PPR #1
AEGIS WHOLESALE CORP., VS.

CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
5-7-09 [40]

Tentative Ruling: The motion will be denied.

The movant, Aegis Wholesale Corp., seeks relief from the automatic stay as to real property in Sacramento, California.

The debtors oppose the motion, arguing that the property is necessary to a reorganization and that the debtors do not have to make post-petition payments to the movant because the value of the property is largely stable.

Initially, the court agrees with the debtors that adequate protection under section 362(d)(1) is provided in order to safeguard the creditor movant against the depreciation in value of its collateral property and not to compensate the movant for lost interest or lost opportunity costs. United Sav. Ass'n of Texas v. Timbers of Inwwod Forest Assocs., Ltd., 484 U.S. 365, 370 (1988). Yet, there is no evidence in the record establishing that the property is depreciating in value.

Further, regardless of whether the property has a value of $95,000 as claimed by the debtors, or $132,500 as originally scheduled by the debtors and claimed

by the movant, there is no equity in the property as its encumbrances total approximately $294,554. See Schedule A Filed November 14, 2008, Docket No. 13; see also Declaration of Estela Estrada ¶7. The movant's deed is in first priority position and secures a claim of approximately $265,145. The second deed is held by Countrywide Home Lending, securing a claim of approximately $29,409. See Proof of claim no. 12.

Turning to necessity to a reorganization, the court does not have sufficient evidence that the property is not necessary to an effective reorganization. This is a chapter 11 proceeding and the property generates $1,250 in monthly rental income, while the monthly payments to the movant are approximately $927 and the monthly payments to the second deed holder are approximately $184, for a total of approximately $1,111. See Proof of claim no. 12; see also Declaration of Estela Estrada ¶¶5, 6.

Based on the record before it, then, the court concludes that relief from the automatic stay must be denied.

10. 08-35814-A-11 FERNANDO/ESTELA ESTRADA
GO #2

HEARING - APPLICATION OF DEBTORS AND DEBTORS-IN-POSSESSION FOR AUTHORITY TO EMPLOY GIOVANNI ORANTES, ESQ. AS GENERAL INSOLVENCY COUNSEL
6-25-09 [57]

Tentative Ruling: The application will be granted in part.

The debtors in possession seek retroactive approval, as of October 30, 2008, to employ the Orantes Law Firm as general bankruptcy counsel for the estate. Orantes also requests permission to withdraw, on a monthly basis, from pre-petition retainer funds and future retainer deposits, its fees and expenses without prior court approval. Orantes proposes to file its monthly invoices with the court and serve them on the U.S. Trustee, secured creditors, and the 20 largest unsecured creditors, subject to objections within 10-days of service. In the event an objection is filed, Orantes would refrain from withdrawing the fees and expenses as to which the objection applies. In the event no objection is filed, Orantes would withdraw its fees and expenses.

Orantes will provide the estate with the following services: (1) assisting the debtors in the compliance with U.S. Trustee requirements; (2) advising the debtors about their rights and obligations pursuant to bankruptcy law; (3) advising the debtors about the disposal and administration of their assets and liabilities; (4) advising the debtors about the requirements of this court and this court's local rules; (5) representing the debtors at hearings and proceedings involving bankruptcy law before this court and other courts; (6) preparing reports and pleadings as necessary and required by law; (7) conducting necessary discovery, including the examination of witnesses, claimants, or adverse parties; and (8) assisting the debtors in the preparation, negotiation, formulation, confirmation, and implementation of a chapter 11 plan. The proposed compensation for Orantes will be at $60 (paralegals and legal assistants) and $250 (attorneys) per hour.

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

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

Monthly interim payments to professionals are appropriate in large cases to relieve their financial burden, before they could apply for approval and payment of fees with the court. United States Trustee v. Knudsen (In re Knudsen), 84 B.R. 668, 672 (B.A.P. 9th Cir. 1988).

When a professional does not obtain prior approval of his or her employment, retroactive approval of the employment may be possible. The Ninth Circuit has a two-prong standard for the retroactive approval of employment for estate professionals. The following must be shown: (1) satisfactory explanation for the failure of the estate to obtain prior court approval; and (2) a showing that the professional has benefitted the estate. In re THC Financial Corp., 837 F.2d 389, 392 (9th Cir. 1988). In deciding whether there is a satisfactory explanation for the failure to obtain prior court approval, the court may consider not just the reason for the delay but also prejudice, or the lack thereof, to the estate resulting from the delay. In re Gutterman, 239 B.R. 828, 831 (Bankr. N.D. Cal. 1999). And, the decision to grant nunc pro tunc approval of employment of a professional is committed to the discretion of the bankruptcy court. Id.

This is the applicant's second application for employment as counsel for the debtors. The court denied the first application because the applicant did not establish satisfactory explanation for the failure to obtain timely prior court approval of his employment. The applicant moves for retroactive court approval of his employment once again, with the provision that he "will not seek compensation for work done prior to 30 days before the filing of the present application." The applicant asserts that the debtors have been unable to secure other bankruptcy counsel and that the applicant has already filed the debtors' plan and disclosure statement.

However, none of the additional facts in this application change the applicant's explanation about why it has taken him approximately six months to apply for employment. The court still does not have a satisfactory explanation for the failure of the debtors to obtain timely court approval. Accordingly, the motion for retroactive approval of employment will be denied once again.

Nevertheless, the court will approve the applicant's employment as counsel for the debtors effective March 29, 2009, which is 30 days before the applicant filed the prior employment application.

The court will approve also the proposed Knudsen procedure. The applicant may withdraw on a monthly basis, from pre-petition retainer funds and future retainer deposits, its fees and expenses without prior court approval. But, the applicant shall file interim compensation applications no more than six-months apart, beginning with the effective date of his employment. The motion will be granted in part.

11. 09-29515-A-7 RONALD/JEANNETT MAKER HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-24-09 [17]

Tentative Ruling: The case 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 June 22, 2009 as required by 11 U.S.C. § 343. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

12. 09-31515-A-7 DARICE WASHINGTON HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-30-09 [14]
ND #1
ONEWEST BANK, FSB, VS.

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

The motion will be granted.

The movant, One West Bank, seeks relief from the automatic stay as to real property in Tracy, California. The property has a value of $203,000 and it is encumbered by claims totaling approximately $494,872. The movant's deed is in second priority position and secures a claim of approximately $75,823.

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

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period,

however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

13. 09-31715-A-7 PATRICK/DONNA LOURIM HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-17-09 [5]

Tentative Ruling: The case will be dismissed.

The debtor failed to file a master address list with the petition as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. The deadline for filing the list has expired and the notice of the commencement of this bankruptcy case was served on or about June 17. Because no master address list had been filed, the notice was not served on all creditors. As a result, they were not notified that the case had been filed nor did they receive notice of the various deadlines for filing complaints, objecting to exemptions, and filing proofs of claims. To permit the case to remain pending would be unfair to all creditors. Accordingly, the petition will be dismissed.

14. 09-28317-A-7 JARVIS/VICKIE PRICE HEARING - MOTION FOR ORDER CONFIRMING THAT NO STAY IS IN EFFECT 6-24-09 [21]
RCO #2
MTG. ELECTR. REGIS. SYS., INC., VS.

Tentative Ruling: The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., seeks an order confirming that the automatic stay is not in effect with respect to a real property in Roseville, California. The movant seeks the confirmation on the grounds that this is the debtors' third bankruptcy filing since February 6, 2009.

The debtors oppose the motion, explaining why they had filed the two prior bankruptcy cases. They request the court to impose the stay in this case.

11 U.S.C. § 362(c)(4)(A) provides that (i) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), the stay under section (a) *shall* not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect." Section 364(c)(4)(B) permits the debtor to move the court to impose the stay in the later bankruptcy case, as long as the debtor makes the request "within 30 days after the filing of the later case."

In other words, the Bankruptcy Code mandates that the stay not go into effect in a debtor's third or later bankruptcy case filed within one year of two or more prior pending cases, unless the debtor moves the court to impose the stay within 30 days of the filing of the last case.

On February 6, 2009, the debtors filed a chapter 7 case (case no. 09-22020). It was dismissed on March 23, 2009 due to the debtors' failure to file a master address list. See Docket Nos. 18 and 19. On April 1, 2009, the debtors filed a chapter 13 case (case no. 09-26027). It was dismissed on April 27, 2009

pursuant to the debtors' motion to dismiss. See Docket No. 15. The debtors filed the instant case on April 29, 2009.

The court has reviewed the docket of the instant case and has found no motion or other request by the debtors for the court to impose the automatic stay pursuant to section 364(c)(4)(B). And, more than 30 days have passed since the filing of this case on April 29. Therefore, the debtors' request for the imposition of the automatic stay is untimely.

The court has reviewed the dockets of the first and second prior cases and has confirmed that those cases were pending within the previous year of the filing of the instant case and that the court dismissed those previous cases. The instant bankruptcy case is not a case refiled under section 707(b). Accordingly, the motion will be granted. The automatic stay did not go into effect upon the filing of the instant case on April 29, 2009.

15. 09-30419-A-7 DIGRAN/JESSICA DAVTIAN HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
PHH MORTGAGE CORP., VS. 7-2-09 [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, PHH Mortgage, seeks relief from the automatic stay as to real property in Magalia, California. The property has a value of $100,000 and it is encumbered by claims totaling approximately $362,033. The movant's deed is in first priority position and secures a claim of approximately $179,806.

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

Thus, the motion will be granted 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

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

16. 09-33820-A-7 MATTHEW/JENNIFER RICH HEARING - MOTION FOR
HRH #1 RELIEF FROM AUTOMATIC STAY
FIRST FEDERAL BANK OF CALIFORNIA, VS. 7-10-09 [8]

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

The motion will be granted.

The movant, First Federal Bank of California, seeks relief from the automatic stay as to real property in Orangevale, California. The property has a value of $185,000 and it is encumbered by claims totaling approximately $407,638. The movant's deed is in first priority position, securing a claim of approximately $339,853.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ.

Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

17. 09-25123-A-7 STEPHEN/MEDY PODLISKA HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 7-1-09 [39]

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, JP Morgan Chase Bank, seeks relief from the automatic stay as to real property in Los Molinos, California.

Given the entry of the debtor's discharge on July 14, 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 $95,000 and it is encumbered by claims totaling approximately $96,823. The movant's deed is the only encumbrance against the property.

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

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period,

however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

18. 09-24724-A-7 LINDA HARK HEARING - MOTION FOR
RFM #2 RELIEF FROM AUTOMATIC STAY
CITIZENS AUTOMOBILE FINANCE, INC., VS. 7-8-09 [24]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Citizens Automobile Finance, Inc., seeks relief from the automatic stay with respect to a 2005 Keystone RV.

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 18, 2009 and a meeting of creditors was first convened on April 28, 2009. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than April 17. 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 28, 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 28, 2009, 30 days after the meeting of creditors.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on May 1, 2009, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on May 28, 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.

19. 09-30224-A-7 JORGE/ANDREA HERRERA
WGM #1
BAC HOME LOANS SERVICING, LP, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-29-09 [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, BAC Home Loans Servicing, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $90,000 and it is encumbered by claims totaling approximately $240,722. The movant's deed is in first priority position and secures a claim of approximately $204,722.

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

upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

20. 09-31227-A-7 PRESTON/NICOLE TINGLEY HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
ONEWEST BANK FSB, VS. 7-8-09 [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, One West Bank, seeks relief from the automatic stay as to real property in Vacaville, California. The property has a value of $297,000 and it is encumbered by claims totaling approximately $446,461. 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

21. 09-31129-A-7 NCA FINANCIAL SERVICES, INC. HEARING - MOTION FOR
RW #1 RELIEF FROM AUTOMATIC STAY ETC
JOSE LUIS GUTIERREZ, VS. 6-22-09 [38]

Tentative Ruling: The motion will be granted.

The movant, Jose Gutierrez, seeks relief from the automatic stay in order to proceed with the prosecution of a state court action against the debtor. Recovery will be limited to available insurance coverage, if any.

The debtor has filed a response, stating that it will agree to a modification of the automatic stay only if the movant's damages are limited "to the extent of debtor's available insurance proceeds." The debtor asks, in other words, that the movant be precluded from litigating claims not covered, or that are inadequately covered by, the debtor's insurance policies.

The debtor also requests that the movant be precluded from proceeding against the individual, nondebtor defendants. Apparently, if the movant obtains a judgment against one of these individuals, that person will have a claim for indemnity against the debtor.

The court cannot impose any stay for the benefit of nondebtors.

If the debtor is attempting to extend the automatic stay to nondebtors, this is contrary to 11 U.S.C. § 362(a) which extends the automatic stay to protect the debtor, the debtor's property, and the property of the bankruptcy estate. Third parties are not covered by the automatic stay.

If the debtor is seeking injunctive relief for the benefit of the nondebtors, this requires an adversary proceeding (assuming such relief is even possible). See Fed. R. Bankr. P. 7001.

As to the debtor's demand that the movant be precluded from litigating claims not covered, or inadequately covered, by the debtor's insurance, this court will not make any determination as to the extent or validity of the debtor's insurance coverage. Such issues should be resolved in the state court litigation. But, the court notes that there is no reason for that court (or this court) to resolve the issue since the movant is agreeing to satisfy its claim only from whatever insurance the debtor may have in place.

Given that the movant would not seek to enforce any judgment against the debtor except to the extent of the debtor's insurance, the court concludes that cause exists for relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute his pending claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

The parties shall bear their own fees and costs.

22. 09-29130-A-7 GARY/JANICE HEATER HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-3-09 [8]

Tentative Ruling: The case 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 June 1, 2009 as required by 11 U.S.C. § 343. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

23. 09-31831-A-7 CALEB/GENEVIEVE EWING HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-17-09 [5]

Tentative Ruling: The case will be dismissed.

The debtor did not file a Statement of Social Security Number, either with the petition or within 15 days of its filing, as required by Fed. R. Bankr. P. 1007(f). The trustee takes the debtor's social security number from this statement and includes it on the notice of the commencement of the case that is served on all creditors. Creditors frequently need the social security number to identify the debtor. Thus, the quality of notice may be substantially reduced and perhaps nullified by the absence of the social security number. 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). As a result, the failure to file the Statement of Social Security Number may be cause for dismissal. See 11 U.S.C. § 707(a)(1). While the debtor in this case belatedly filed the statement on July 13, this was not in time to include the social security number on the notice of the commencement of the case. It was served on or about June 18. Thus, the late filing caused prejudice to creditors.

24. 09-27532-A-7 ARNULFO RODRIGUEZ HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-19-09 [23]

Tentative Ruling: The case 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 June 17, 2009 as required by 11 U.S.C. § 343. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

25. 09-28832-A-7 THERESA SNOW CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-5-09 [14]
WGM #1
DEUTSCHE BANK NAT'L TRUST CO., VS.

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

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

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to real property in Lodi, California. The property has a value of $186,000 and it is encumbered by claims totaling approximately $221,547. 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, the trustee filed a report of no distribution on July 9, 2009.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

26. 09-21333-A-7 KHADER/SUZY NINO HEARING - MOTION FOR
SF #3 RELIEF FROM AUTOMATIC STAY ETC
MICHAEL FIGONE, ET AL, VS. 7-6-09 [39]

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

The movant, Michael Figone, moves the court to approve stipulation with the debtors for relief from the automatic stay to permit the prosecution of litigation of pending personal injury claims against the debtors. Under the terms of the stipulation, the movant may liquidate the claims, but their satisfaction will be limited to available insurance coverage and/or the assets of third parties.

The court has reviewed the stipulation. While it is clear that the movant may not enforce any judgment against property of the estate, the stipulation is not clear that the movant may not enforce any judgment against the debtors. The court notes that the movant has not filed a timely complaint objecting to the debtors' discharge. The deadline for filing of such a complaint expired on

April 27, 2009.

Hence, provided the movant would not seek to enforce any judgment personally against the debtors, and provided that he will proceed against them only to the extent his claims can be satisfied from their insurance, cause exists for the granting of relief from the automatic stay. The stipulation will be approved with the foregoing provisions. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute his pending claims against the debtors, but not to enforce any judgments against them or the estate other than against available insurance coverage or third party nondebtors, if any.

The parties shall bear their own fees and costs.

27. 09-27033-A-7 CURTIS CASH
KAT #1
DEUTSCHE BANK NAT'L TRUST CO., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
7-1-09 [13]

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

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to real property in Ceres, California. The property has a value of $160,000 and it is encumbered by claims totaling approximately $375,983. The movant's deed is in first priority position and secures a claim of approximately $306,616.

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 May 19, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

28. 09-26434-A-7 PATRICK/TIFFANY MALIA
RC #1

HEARING - MOTION TO DISMISS JOINT PARTY
6-2-09 [11]

Tentative Ruling: The motion will be granted and the petition will be dismissed with respect to Mr. Malia only.

Debtor Patrick Malia moves for dismissal of the petition as to him only because when the petition was filed, on April 6, 2009, the debtors had already obtained a judgment of dissolution of marriage.

11 U.S.C. § 707(a) provides that "[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause." 11 U.S.C. § 302(a) allows the filing of joint cases only by spouses, *i.e.*, couples who are married.

Given that the debtors were not married on the petition date, they were not eligible to file a joint petition. This is cause for dismissal. The petition will be dismissed with respect to Mr. Malia only. The motion will be granted.

29. 09-31434-A-7 NATALIE PIERCE

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
6-24-09 [11]

Tentative Ruling: The case will be dismissed.

11 U.S.C. § 521(a)(1) and Fed. R. Bankr. P. 1007(b) & (c) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures (Form 22A), a schedule of executory contracts, and a statement of current monthly income no later than 15 days after the filing of the petition. The 15-day period has expired and none of these documents have been filed. By failing to file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(3).

30. 09-31434-A-7 NATALIE PIERCE

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
7-8-09 [17]

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $56 due on July 6 was not paid. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

31. 09-29436-A-7 JOSEPH ARMOR, SR. HEARING - MOTION FOR
RDW #1 RELIEF FROM AUTOMATIC STAY
PATELCO CREDIT UNION, VS. 7-7-09 [15]

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

The motion will be granted.

The movant, Patelco Credit Union, seeks relief from the automatic stay with respect to a 2008 GMC Acadia. The vehicle has a value of $24,010 and its secured claim is approximately $36,493. 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 June 17, 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.

32. 09-26637-A-7 LETICIA/RODOLFO ABESAMIS HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
DCFS USA LLC, VS. 6-24-09 [20]

Tentative Ruling: The motion will be dismissed as moot.

The movant, DCFS U.S.A., seeks relief from the automatic stay with respect to a 2003 Mercedes Benz E320.

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 April 8, 2009 and a meeting of creditors was first convened on May 18, 2009. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than May 8. 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 May 18, 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 June 17, 2009, 30 days after the meeting of creditors.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on May 23, 2009, indicating an intent not to administer the vehicle or any other assets.

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

33. 09-32337-A-7 PETER/KATHERINE PENSOTTI HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
HSBC MORTGAGE CORP. , VS. 7-1-09 [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, HSBC Mortgage Corporation, seeks relief from the automatic stay as to real property in Truckee, California. The property has a value of $325,000 and it is encumbered by claims totaling approximately $463,657. The movant's deed is in first priority position and secures a claim of approximately $349,024.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

34. 09-31939-A-7 ROBERT/JOYCE MIGUEL HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
VANGUARD TITLE TRUST, VS. 7-10-09 [8]

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

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

The motion will be granted.

The movant, Vanguard Title Trust, seeks relief from the automatic stay with respect to a leased 2001 Mercedes Benz S500. The outstanding amount under the lease agreement totals $19,324. The debtor also has not made two pre-petition and one 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 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.

35. 09-20140-A-7 SHASTA REGIONAL MEDICAL CENTER, LLC — CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC 3-9-09 [69]
FWP #1
MEDICAL PROPERTIES TRUST, INC., VS.

Tentative Ruling: The motion will be denied.

Creditors, Medical Properties Trust, Inc. and its affiliates, move the court for the following relief, relief from the automatic stay allowing: (i) them to exercise their rights under lease, credit, and security agreements with the debtor (including 10/29 and 10/31 promissory notes); and (ii) annuling the automatic stay retroactively to January 6, 2009 to validate the findings of fact and conclusions of law of the North Carolina state court, which appointed the state court receiver, issued a preliminary injunction, and made findings and conclusions with respect to MPT's rights and obligations under its respective agreements with the debtor. The state court has authorized the appointed receiver to take possession of and maintain and control the debtor's bank accounts in order to remit proceeds of accounts receivable to the movants, for the satisfaction of debt owed to the movants. See January 7, 2009 Order Appointing Receiver, Exhibit J to Motion, Docket No. 77 at 7-8, ¶¶1-5. The receiver has remitted already approximately $2.415 million to the movants. They are still owed approximately $6 million.

The state court has decided also the issue of the priority of the movants' interest in the debtor's bank accounts and receivables. The state court expressly found that "[w]ith the satisfaction of [the debtor's] obligations to GECC, MPT now holds a first lien on . . . the funds in [the debtor's] bank accounts (including Wachovia Accounts and an account or accounts being maintained at Bank of America, N.A.), accounts receivable owed to [the debtor], and all proceeds of [the debtor's] accounts receivable." See Exhibit J to Motion, Docket No. 77 ¶13.

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

On September 23, 2008, the movants loaned $3 million to the debtor to fund working capital costs while the debtor searched for a buyer for the hospital facility it operates. But, after default by the debtor under the lease and credit agreements with the movants, on October 23, 2008 the movants terminated the lease agreement and a management agreement between the debtor and SRMC Management, the manager of the debtor owned at the time by Hospital Partners of America, Inc., an entity in its own bankruptcy proceeding. On October 29, 2008, the debtor requested and the movants loaned it approximately $1.809 million to meet payroll and other basic operational expenses. On October 31, 2008, the debtor again requested and the movants again loaned it approximately $3.227 million to meet payroll and other basic operational expenses. The loans are evidenced by three separate credit and loan agreements (MPT Credit Agreement, 10/29 Promissory Note, 10/31 Promissory Note) and are secured by a security agreement and two amendments to that agreement (Security Agreement, Amended and Restated Security Agreement, Second Amended and Restated Security Agreement).

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

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).

While the movants did not know about the bankruptcy filing when they obtained the state court's order appointing the receiver and issuing the preliminary

injunction and while they did not know about the bankruptcy filing when the receiver remitted to them $2.415 million, the equities balance in favor of the bankruptcy estate because of the potential for prosecution of avoidance claims against the movants. Because this case was filed on January 6, 2009, the trustee would be able to avoid any transfers by the debtor made as far back as October 8, 2008. This would include any transfers the debtor made in conjunction with the 10/29 and 10/31 promissory notes. From the record, the court is not clear on how the avoidance of those transfers would impact the movants' interest in the receivables and proceeds in the bank accounts. Until the trustee has had the opportunity to investigate the pre-petition transfers to the movants and to determine whether challenging the state court's findings and conclusions on the priority of the movants' interest in the debtor's bank accounts and receivables has merit, this court will deny without prejudice both retroactive and prospective relief from the automatic stay.

For the same reasons above, the court would not have granted relief from the automatic stay had the movants applied for it before obtaining the order from the state court.

Lastly, while the movants argue that there is no equity in its collateral property, the court has no evidence of the value of the movants' collateral. Neither the movants' original motion, nor the amended motion cite to any evidence in the record establishing the value of the movants' collateral. See Motion at 10 ln. 16-21; see also Amended Motion at 4 ln.20-21. Moreover, the value of receivables in Schedule B is $23 million, far in excess of the $6 million still owed to the movants. The motion will be denied.

36. 09-31441-A-7 ANNA NARAYAN

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
6-30-09 [11]

Tentative Ruling: The case will be dismissed.

11 U.S.C. § 521(a)(1) and Fed. R. Bankr. P. 1007(b) & (c) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures (Form 22A), a schedule of executory contracts, and a statement of current monthly income no later than 15 days after the filing of the petition. The 15-day period has expired and none of these documents have been filed. By failing to file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(3).

37. 09-30942-A-7 KENNETH/PAMELA ABERSON
KAT #1
DEUTSCHE BANK NAT'L TRUST CO., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
7-7-09 [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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to real property in Vacaville, California. The property has a value of $999,000 and it is encumbered by claims totaling approximately $1,336,525. The movant's deed is the only deed against the property, securing a claim of approximately $1,323,147.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 9, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

38. 09-29544-A-7 TERRENCE MAYHORN HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-17-09 [17]

Tentative Ruling: The case 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 June 15, 2009 as required by 11 U.S.C. § 343. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

39. 09-31245-A-7 DAVID SALAS HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-25-09 [8]

Tentative Ruling: The case will be dismissed.

11 U.S.C. § 521(a)(1) and Fed. R. Bankr. P. 1007(b) & (c) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures (Form 22A), a schedule of executory contracts, and a statement of current monthly income no later than 15 days after the filing of the petition. The 15-day period has expired and none of these documents have been filed. By failing to file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(3).

40. 07-28846-A-12L CHARLES YURGELEVIC, JR. HEARING - MOTION TO DISMISS
NLE #7 6-15-09 [97]

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

The chapter 12 trustee moves for dismissal because the debtor is $20,100 delinquent under the terms of the chapter 12 plan. See June 15, 2009 Declaration of Stephanie Nichols ¶ 3.

11 U.S.C. § 1208(c) provides that "on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including - (6) material default by the debtor with respect to a term of a confirmed plan."

Given the debtor's delinquency, the court concludes that the debtor is in material default for purposes of section 1208(c)(6). This is cause for dismissal. Accordingly, the motion will be granted and the case will be dismissed.

41. 09-27647-A-7 VOLODYMYR/SVETLANA DUBINSKY HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
WGM #1 7-7-09 [48]
DEUTSCHE BANK NAT'L TRUST CO., VS.

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

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to real property in Folsom, California. The property has a value of $939,000 and it is encumbered by claims totaling approximately $1,389,270. See Schedule D. 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

42. 09-32147-A-11 PARAMJIT/KITTY CHAWLA — HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 7-2-09 [10]

Tentative Ruling: The case will be dismissed.

11 U.S.C. § 521(a)(1) and Fed. R. Bankr. P. 1007(b) & (c) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures (Form 22A), a schedule of executory contracts, and a statement of current monthly income no later than 15 days after the filing of the petition. The 15-day period has expired and none of these documents have been filed. By failing to file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(3).

43. 09-32849-A-7 DARRELL/ALMA BURRELL — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 7-10-09 [16]
HRH #1
FIRST FEDERAL BANK OF CALIFORNIA, VS.

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

The motion will be granted.

The movant, First Federal Bank of California, seeks relief from the automatic stay as to real property in Tracy, California. The property has a value of $280,000 and it is encumbered by claims totaling approximately $661,497. The movant's deed is in first priority position and secures a claim of approximately $574,497.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

44. 09-21552-A-7 MARSHALL/MARY ROSE
ADS #1

CONT. HEARING - MOTION FOR REDEMPTION OF PERSONAL PROPERTY
4-29-09 [23]

Tentative Ruling: The motion will be denied.

The debtor seeks to redeem a 1995 Infinity J30 in a fair condition. The debtor has submitted a Kelly Blue Book printout with a private party value for the vehicle of $3,260. After subtracting approximately $2,793 for needed repairs, the debtor asserts that the replacement value of the vehicle is only $467.34. The debtor listed Capital One Auto Finance as holding a secured claim in the approximate amount of $2,379.68 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 court continued this motion from June 22 to allow the debtor to correct numerous deficiencies identified in the court's June 22 ruling. The debtor has filed a supplemental declaration asserting a "fair market value of $900" and a "general fair market valuation range between $750 and $1,500."

However, the court still does not have evidence of the vehicle's replacement value as of the petition date, namely the vehicle's retail value, assuming

excellent condition, minus the cost of reconditioning the vehicle by the retail merchant, and not the debtor. See 11 U.S.C. § 506(a)(2). The supplemental declaration of Colby Sandman considers both private party and wholesale values, as well as what the debtor would have to pay to recondition the vehicle. This is not what section 506(a)(2) prescribes.

The court also notes that the debtor's Exhibit A contains a Kelly Blue Book report, which identifies the vehicle's retail value at $5,235. This is substantially more than the asserted $900 fair market value. The motion will be denied.

45. 09-21552-A-7 MARSHALL/MARY ROSE
ADS #2

CONT. HEARING - MOTION FOR REDEMPTION OF PERSONAL PROPERTY 4-29-09 [28]

Tentative Ruling: The motion will be denied.

The debtor seeks to redeem a 2003 Chevrolet Trailblazer. The debtor has submitted a Carmax appraisal valuing the vehicle at $3,000. After subtracting approximately $2,687.15 for needed repairs, the debtor claims that the replacement value of the vehicle is only $312.85. The debtor listed Capital One Auto Finance as holding a secured claim in the approximate amount of $4,974.28 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 court continued this motion from June 22 to allow the debtor to correct numerous deficiencies identified in the court's June 22 ruling. The debtor has filed a supplemental declaration asserting a "fair market value of $4,036.86" and a "general fair market valuation range between $4,500 and $5,500."

However, the court still does not have evidence of the vehicle's replacement value as of the petition date, namely the vehicle's retail value, assuming excellent condition, minus the cost of reconditioning the vehicle by the retail merchant, and not the debtor. See 11 U.S.C. § 506(a)(2). The supplemental declaration of Colby Sandman considers both private party and wholesale values, as well as what the debtor would have to pay to recondition the vehicle. This is not what section 506(a)(2) prescribes.

The court also notes that the debtor's Exhibit A contains a Kelly Blue Book report, which identifies the vehicle's retail value at $9,350. This is substantially more than the asserted $4,036 fair market value. The motion will be denied.

46. 09-21552-A-7 MARSHALL/MARY ROSE
ADS #3

CONT. HEARING - MOTION FOR REDEMPTION OF PERSONAL PROPERTY 4-29-09 [32]

Tentative Ruling: The motion will be denied.

The debtor seeks to redeem a 1999 Mazda Protégé. The debtor has submitted a Carmax appraisal valuing the vehicle at $1,200. After subtracting approximately $550 for needed repairs, the debtor claims that the replacement value of the vehicle is only $650. The debtor listed Americredit as holding a secured claim in the approximate amount of $2,185.89 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 court continued this motion from June 22 to allow the debtor to correct numerous deficiencies identified in the court's June 22 ruling. The debtor has filed a supplemental declaration asserting a "fair market value of $500" and a "general fair market valuation range between $500 and $1,500."

However, the court still does not have evidence of the vehicle's replacement value as of the petition date, namely the vehicle's retail value, assuming excellent condition, minus the cost of reconditioning the vehicle by the retail merchant, and not the debtor. See 11 U.S.C. § 506(a)(2). The supplemental declaration of Colby Sandman considers both private party and wholesale values, as well as what the debtor would have to pay to recondition the vehicle. This is not what section 506(a)(2) prescribes.

The court also notes that the debtor's Exhibit A contains a Kelly Blue Book report, which identifies the vehicle's retail value at $5,075. This is substantially more than the asserted $500 fair market value. The motion will be denied.

47. 09-30353-A-7 ROBERT NEW — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
WGM #1 — 7-2-09 [10]
CHASE HOME FINANCE, LLC, VS.

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

The motion will be granted.

The movant, Chase Home Finance, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $245,500 and it is encumbered by claims totaling approximately $351,995. 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 $292,069.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

48. 09-30656-A-7 JOSE VILLEGAS HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-16-09 [11]

Tentative Ruling: The order to show cause will be discharged because it is moot.

The petition was filed on May 27. The debtor has not filed any statements and schedules as required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on June 11. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was July 11. The schedules and statements were not filed on or before the 45th day. Thus, on July 12, the petition was automatically dismissed.

Despite discharging the order to show cause, the court will confirm the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2).

49. 09-30656-A-7 JOSE VILLEGAS HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 7-1-09 [18]

Tentative Ruling: The order to show cause will be discharged because it is moot.

The petition was filed on May 27. The debtor has not filed any statements and schedules as required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on June 11. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was July 11. The schedules and statements were not filed on or before the 45th day. Thus, on July 12, the petition was automatically dismissed.

Despite discharging the order to show cause, the court will confirm the prior

automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2).

50. 09-30656-A-7 JOSE VILLEGAS
DGB #2
MLK COMMERCIAL, LLC, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
7-7-09 [23]

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on May 27. The debtor has not filed any statements and schedules as required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on June 11. See Fed. R. Bankr. P. 1007(c).

When schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was July 11. The schedules and statements were not filed on or before the 45th day. Thus, on July 12, the petition was automatically dismissed. When the case was dismissed, the automatic stay expired as a matter of law. See 11 U.S.C. § 362(c)(1) & (c)(2). This motion, then, is moot.

Despite dismissing the motion, the court will confirm the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2).

51. 09-31658-A-7 NATIONAL CREDIT ACCEPTANCE
RW #1
JOSE GUTIERREZ, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-22-09 [36]

Tentative Ruling: The motion will be granted.

The movant, Jose Gutierrez, seeks relief from the automatic stay in order to proceed with the prosecution of a state court action against the debtor. Recovery will be limited to available insurance coverage, if any.

The debtor has filed a response, stating that it will agree to a modification of the automatic stay only if the movant's damages are limited "to the extent of debtor's available insurance proceeds." The debtor asks, in other words, that the movant be precluded from litigating claims not covered, or that are inadequately covered by, the debtor's insurance policies.

The debtor also requests that the movant be precluded from proceeding against the individual, nondebtor defendants. Apparently, if the movant obtains a judgment against one of these individuals, that person will have a claim for indemnity against the debtor.

The court cannot impose any stay for the benefit of nondebtors.

If the debtor is attempting to extent the automatic stay to the nondebtors, this is contrary to 11 U.S.C. § 362(a) which extends the automatic stay to protect the debtor, the debtor's property, and the property of the bankruptcy estate. Third parties are not covered by the automatic stay.

If the debtor is seeking injunctive relief for the benefit of the nondebtors, this requires an adversary proceeding (assuming such relief is even possible). See Fed. R. Bankr. P. 7001.

As to the debtor's demand that the movant be precluded from litigating claims not covered, or inadequately covered, by the debtor's insurance, this court

will not make any determination as to the extent or validity of the debtor's insurance coverage. Such issues should be resolved in the state court litigation. But, the court notes that there is no reason for that court (or this court) to resolve the issue since the movant is agreeing to satisfy its claim only from whatever insurance the debtor may have in place.

Given that the movant would not seek to enforce any judgment against the debtor except to the extent of the debtor's insurance, the court concludes that cause exists for relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute his pending claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

The parties shall bear their own fees and costs.

52. 09-30860-A-7 GERALD/BARBARA WALTHER HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
BAC HOME LOANS SERVICING, VS. 6-30-09 [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, BAC Home Loan Servicing, seeks relief from the automatic stay as to real property in Galt, California. The property has a value of $225,000 and it is encumbered by claims totaling approximately $389,698. The movant's deed is in first priority position and secures a claim of approximately $329,698.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

53. 09-31560-A-7 JAMES/DIANE TELLES HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, F.S.B., VS. 7-2-09 [8]

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

The motion will be granted.

The movant, Indymac Federal Bank, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $400,000 and it is encumbered by claims totaling approximately $479,512. 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 $428,512.

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

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ.

Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

54. 08-38364-A-7 GREGORY LUTZ AND HEARING - MOTION FOR
PD #2 DINAH HAMMOND RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 7-2-09 [39]

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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to real property in West Sacramento, California.

Given the entry of the debtor's discharge on April 15, 2009, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $500,000 and it is encumbered by claims totaling approximately $985,170. The movant's deed is in first priority position and secures a claim of approximately $734,439.

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

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

55. 09-29564-A-7 ROBERT/CONNIE HARRIS HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-18-09 [10]

Tentative Ruling: The case 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 June 15, 2009 as required by 11 U.S.C. § 343. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

56. 09-30964-A-7 TERRY JEFFERIES HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 7-2-09 [11]
WGM #1
AMERICAN HOME MTG. SVCING., INC., VS.

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

The motion will be granted.

The movant, American Home Mortgage Servicing, Inc., seeks relief from the automatic stay as to real property in Vacaville, California. The property has a value of $400,000 and it is encumbered by claims totaling approximately $730,958. 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

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

57. 09-23465-A-11 MOORE EPITAXIAL, INC.
HLC #5

FINAL HEARING - SECOND MOTION FOR AUTHORITY TO USE CASH COLLATERAL
6-8-09 [94]

Tentative Ruling: The motion will be granted.

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

The debtor seeks to use the cash collateral to meet its ongoing operating expenses, including, without limitation, partial contract labor, utilities, insurance, and patent fees. The debtor's projected expenses also exclude some deferred pay to its contractors. The debtor has projected total operating expenses as follows: July expenses of $17,546; August expenses of $21,734; and September expenses of $15,074, for a total of $54,353 of expenses, excluding a total of $9,165 in deferred pay. As to income, the debtor has projected having $94,715 in cash as of June 30, 2009. See Declaration of Gary Moore ¶ 14; see also Exhibit A to Notice of Hearing.

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

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

The court will approve the debtor's use of cash collateral from July 1 through September 30, 2009, as the projected available income as of June 30 exceeds the projected expenses for the subsequent three-month period. Moreover, GSI's interest in the cash collateral is adequately protected by the abundant equity in the debtor's interest in the IRS shares and its inventory, parts and finished goods, which appear to exceed $5.2 million in value, while GSI's claim totals only approximately $2,334,460. The motion will be granted.

58. 09-30765-A-7 CYNTHIA GOOCH HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
ONEWEST BANK, FSB, VS. 6-29-09 [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, One West Bank, seeks relief from the automatic stay as to real property in El Dorado Hills, California. The property has a value of $415,000 and it is encumbered by claims totaling approximately $428,079. The movant's deed is in first priority position and secures a claim of approximately $383,087.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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. 09-26366-A-7 SUSAN MAZZERA
USA #1

HEARING - MOTION FOR ORDER EXTENDING TIME IN WHICH TO FILE A COMPLAINT TO DETERMINE DISCHARGEABILITY OF ITS DEBT
6-24-09 [46]

Tentative Ruling: The motion will be granted.

Creditor U.S. Small Business Administration moves for a 32-day extension, from September 28 to October 30, 2009, of the deadline for filing complaints to determine the dischargeability of debts pursuant to 11 U.S.C. § 523. The movant needs the extension to complete an investigation of the financial affairs and involvement in the debtor's business of Ronald Sette, who is in his own bankruptcy case and is a general unsecured creditor in this case.

Fed. R. Bankr. P. 4007(c) provides that the court may extend the deadline for filing section 523 complaints for cause. Motions must be filed before the deadline expires.

The present deadline for filing section 523 complaints is September 28, 2009. See Notice of Conversion, Docket No. 44. This motion is timely as it was filed on June 24, 2009.

Given the movant's investigation of Mr. Sette, who appears to be involved or have been involved in the operations of the debtor's business, cause for extension of the deadline exists. The motion will be granted and the deadline for filing section 523 complaints will be extended to October 30, 2009.

60. 09-20567-A-7 CAROLYN WILSON CONT. STATUS CONFERENCE
09-2237 4-20-09 [1]
CAROLYN WILSON, ET AL., VS.
HSBC BANK USA N.A.

Tentative Ruling: None.

61. 09-20567-A-7 CAROLYN WILSON HEARING - MOTION TO
09-2237 EDH #2 DISMISS ADVERSARY PROCEEDING
CAROLYN WILSON, VS. PROCEEDING
HSBC BANK USA, N.A. 6-12-09 [13]

Tentative Ruling: The motion will be granted.

Defendant HSBC Bank U.S.A. moves the court to dismiss the complaint of the plaintiff, Carolyn Wilson, the debtor in the underlying bankruptcy case, on the basis that it fails to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6), as made applicable by Fed. R. Bankr. P. 7012(b).

The plaintiff has filed an untimely opposition to the motion, seeking time until September 24, 2009 to submit a "brief in support of complaint." She also requests the court to compel "Defendant . . . to produce evidence . . . that they are the holder of [a note secured by the plaintiff's real property] and are the real party of interest." The plaintiff complains that she does not know who holds her note.

"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).

Under the federal pleading rules, a complaint need only give fair notice of the pleader's claim or defense so that the opposing parties can respond, undertake discovery, and prepare for trial. See Conley v. Gibson, 355 U.S. 41, 47-48 (1957); Swierkiewicz.v. Sorema N.A., 534 U.S. 506, 513-14 (2002). Rule 8(a)(2), as incorporated by Fed. R. Bankr. P. 7008, calls for this notice to be contained in a *short* and *plain* statement of the claim showing that the pleader is entitled to relief.

Fed. R. Civ. P. 9(b), as applied here via Fed. R. Bankr. P. 7009, requires parties alleging fraud to plead with particularity the circumstances constituting fraud. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally. Fed. R. Civ. P. 9(b). The main purpose of the rule is for the plaintiff to provide the defendant with notice about fraud claim(s). Hayduk v. Lanna, 775 F.2d 441, 444 (1st Cir. 1985).

Initially, the plaintiff's opposition will be stricken as untimely because opposition was due 14 days before the hearing on the motion. In this instance, it was due on July 10, 2009. The plaintiff filed her opposition on July 15. Even if her opposition was timely, the court will not compel HSBC to produce documents because such relief requires that the plaintiff propound a discovery request. And, the court cannot order HSBC to produce any documents at this time because discovery has not yet opened.

The complaint challenges HSBC' motion for relief from the automatic stay (DCN

EDH-1) in the main bankruptcy case (Case No. 09-20567), which the court granted on April 30, 2009. See Case No. 09-20567, Docket Nos. 80 and 81. In addition, the complaint alleges a claim for fraud involving two loan transactions encumbering one of the plaintiff's real properties.

To the extent the complaint challenges HSBC' motion for relief from the automatic stay (DCN EDH-1), that motion was granted by the court on April 30, 2009 over the debtor's objection. The order granting the motion became a final order on May 10. Moreover, on April 28, before the court entered the order granting HSBC's relief stay motion, the plaintiff received her discharge, which caused the protections offered by the automatic stay to the debtor and her interest in the property to expire. See 11 U.S.C. § 362(c)(2)(C).

With respect to the fraud claim, the complaint alleges few facts that sound in fraud. In California, the plaintiff must show the following to prove actual fraud: (1) misrepresentation, concealment or nondisclosure of a material fact; (2) made consciously by the defendant; (3) with the intent and purpose to deceive or induce the plaintiff; (4) justifiable reliance by the plaintiff; and (5) a resulting damage. Odorizzi v. Bloomfield School Dist., 246 Cal. App. 2d 123, 128 (1966).

The complaint refers to two loan transactions on the same property, a new loan in 2003 and a refinance in 2005. The plaintiff states that she "was able to keep the [new loan] mortgage current and maintained a good to excellent credit rating." "While refinancing with Home Savings Mortgage in 2005, [the plaintiff] was promised that her payment would not exceed much more than the previous loan . . . [t]his proved to be a false representation."

The complaint states that the plaintiff "discovered that the value of her property was inflated for the purpose of collateralizing her mortgages and trading those mortgages on the stock market as derivatives" and that she "relied on the expertise and fiduciary duties of the real estate professionals and banks involved to provide her with honest and accurate assessment of her property."

However, the plaintiff does not state that HSBC made any representations, concealment or nondisclosure to her or that she relied on HSBC for anything. More importantly, the plaintiff describes no transactions with HSBC. The complaint makes no allegations of contractual privity with HSBC. The complaint does not identify the lender in the new loan transaction. And, the lender for the refinance was Home Savings Mortgage, not HSBC. The complaint contains no facts relating to any conduct by HSBC at or about the time the plaintiff obtained the new loan or the refinance. The court concludes then that the complaint does not provide HSBC with sufficient notice under Fed. R. Civ. P. 9(b), permitting it to respond to the complaint.

Finally, the court concludes that it no longer has jurisdiction over the claims in this adversary proceeding. Bankruptcy jurisdiction extends to four types of title 11 matters, cases "under title 11," cases "arising under title 11," proceedings "arising in a case under title 11," and cases "related to a case under title 11." See Stoe v. Flaherty, 436 F.3d 209, 216 (3rd Cir. 2006). The first three types of title 11 matters are termed as core proceedings by 28 U.S.C. § 157(b)(1), which provides that "[b]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . . and may enter appropriate orders and judgments." 28 U.S.C. § 157(b)(2) states that "[c]ore proceedings include, but are not limited to- (A) matters concerning the administration of the estate

. . . [and] (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims."

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

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

A proceeding "arising under title 11" is one that "'invokes a substantive right provided by title 11.'" Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1081 (9th Cir. 2000) (quoting Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987)). A proceeding "arising in a case under title 11" is one that "'by its nature, could arise *only* in the context of bankruptcy case.'" Id. Finally, a proceeding is "related to a case under title 11" if its outcome could conceivably affect the administration of the estate. Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.), 167 B.R. 591, 595 (Bankr. N.D. Cal. 1994) (citing Fietz v. Great Western Savings (In Fietz), 852 F.2d 455, 457 (9th Cir. 1988)).

The fraud claim in this proceeding is not under title 11 and does not arise under title 11 as it does not invoke "substantive rights provided by title 11." It invokes substantive rights provided by state law, namely the tort principles of fraud. The claim also does not arise in a case under title 11 because it could easily arise in a context outside of a bankruptcy case. For example, the plaintiff may pursue her claim for fraud in state court. The claim is not related to a case under title 11 either because the trustee in the plaintiff's bankruptcy case has already administered the estate. He filed a report of no distribution on March 4, 2009, indicating that he has no interest in administering the alleged claims. Moreover, the instant motion demonstrates that consent of the parties for this court to enter appropriate orders and judgments is highly unlikely in this case. This court concludes then that it does not have jurisdiction over the fraud claim in this proceeding.

Accordingly, the motion will be granted and the adversary proceeding will be dismissed.

62.	09-20567-A-7 09-2297 CAROLYN WILSON, VS. MTG. ELECTR. REGIS. SYS., INC., VS.	CAROLYN WILSON RCO #1	HEARING - MOTION TO DISMISS COMPLAINT 6-19-09 [10]

Tentative Ruling: The motion will be granted.

Creditors Mortgage Electronic Registration Systems, Inc. and GMAC Mortgage move the court to dismiss the complaint of the plaintiff, Carolyn Wilson, who is also the debtor in the underlying bankruptcy case, on the basis that it fails to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6), as made applicable by Fed. R. Bankr. P. 7012(b). The plaintiff has

not named GMAC in the pending complaint. And while she has named only "Attorneys for Mortgage Electronic Registration Systems, Inc., its assignees, And/or successors in interest" in the complaint, the court will deem MERS as the real party in interest defendant in this action.

The plaintiff has filed an untimely opposition to the motion, seeking time until September 24, 2009 to submit a "brief in support of complaint." She also requests the court to compel "Defendant . . . to produce evidence ... that they are the holder of [a note secured by the plaintiff's real property] and are the real party of interest." The plaintiff complains that she does not know who holds her note.

"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).

Under the federal pleading rules, a complaint need only give fair notice of the pleader's claim or defense so that the opposing parties can respond, undertake discovery, and prepare for trial. See Conley v. Gibson, 355 U.S. 41, 47-48 (1957); Swierkiewicz.v. Sorema N.A., 534 U.S. 506, 513-14 (2002). Rule 8(a)(2), as incorporated by Fed. R. Bankr. P. 7008, calls for this notice to be contained in a *short* and *plain* statement of the claim showing that the pleader is entitled to relief.

Fed. R. Civ. P. 9(b), as applied here via Fed. R. Bankr. P. 7009, requires parties alleging fraud to plead with particularity the circumstances constituting fraud. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally. Fed. R. Civ. P. 9(b). The main purpose of the rule is for the plaintiff to provide the defendant with notice about fraud claim(s). Hayduk v. Lanna, 775 F.2d 441, 444 (1st Cir. 1985).

The pending complaint does not name GMAC as a defendant in this proceeding. Thus, the motion will be dismissed as unnecessary with respect to GMAC.

Also, the plaintiff's opposition will be stricken as untimely because oppositions were due 14 days before the hearing on the motion. In this instance, they were due on July 10, 2009. The plaintiff filed her opposition on July 15. Even if the opposition were timely, the court cannot compel MERS to produce documents because such relief requires a motion. More importantly, the court cannot order MERS to produce any documents at this time because it has not opened discovery. In addition, the plaintiff's opposition names Indymac Federal Bank as a defendant in this proceeding. Indymac, though, is not named in the complaint and has not been served with the summons and complaint.

The complaint challenges MERS' motion for relief from the automatic stay (DCN RCO-1) in the main bankruptcy case (Case No. 09-20567), which the court granted on May 19, 2009. See Case No. 09-20567, Docket Nos. 84 and 85. In addition, the complaint alleges fraud, predatory lending, unconscionability, Truth In Lending Act violations, Home Ownership and Equity Protection Act violations, Real Estate Settlement Procedures Act violations, Fair Debt Collections Practices Act violations, Fair Credit Reporting Act violations, failure to verify income and assets, and Equal Credit Protection Act violations.

To the extent the complaint challenges MERS' motion for relief from the automatic stay (DCN RCO-1) in the main bankruptcy case, that motion was granted by the court on May 19, 2009 over the debtor's objection. The order granting the motion became a final order on May 29. Moreover, the plaintiff had no standing to object to that stay relief motion because she had already received her discharge on April 28, 2009, which had caused the automatic stay to expire insofar as it protected her and her interest in her property. See 11 U.S.C. § 362(c)(2)(C).

With respect to the fraud claim, the complaint alleges virtually no facts that sound in fraud. In California, the plaintiff must show the following to prove actual fraud: (1) misrepresentation, concealment or nondisclosure of a material fact; (2) made consciously by the defendant; (3) with the intent and purpose to deceive or induce the plaintiff; (4) justifiable reliance by the plaintiff; and (5) a resulting damage. Odorizzi v. Bloomfield School Dist., 246 Cal. App. 2d 123, 128 (1966).

While the plaintiff alleges that she "is a victim of an aggressive growth business strategy of originating, buying, or selling . . . loans . . . misrepresentation of debt to income and loan to value ratios, and targeting of specific neighborhoods," she alleges no specific facts showing that she is entitled to relief. For instance, the complaint is devoid of any facts about any misrepresentations, concealment or nondisclosure by MERS directed to the plaintiff. More importantly, the complaint contains no facts relating to conduct by MERS at or about the time the plaintiff signed the promissory note that is the subject of the complaint. Merely referencing fraud in the complaint is not sufficient notice to MERS under Fed. R. Civ. P. 9(b) permitting it to respond to the complaint.

Further, the remainder of the complaint simply states that "Plaintiff allege further violations as follows." The plaintiff then goes on to list ten different statutes and common laws. However, she alleges no facts relating to how she obtained the loan(s) at issue and the defendants' misconduct at that time, showing that she is entitled to relief under each referenced law. This portion of the complaint, then, does not meet the notice requirements of Rule 8(a)(2).

Finally, the court concludes that it no longer has jurisdiction over the claims in this adversary proceeding. Bankruptcy jurisdiction extends to four types of title 11 matters, cases "under title 11," cases "arising under title 11," proceedings "arising in a case under title 11," and cases "related to a case under title 11." See Stoe v. Flaherty, 436 F.3d 209, 216 (3rd Cir. 2006). The first three types of title 11 matters are termed as core proceedings by 28 U.S.C. § 157(b)(1), which provides that "[b]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . . and may enter appropriate orders and judgments." 28 U.S.C. § 157(b)(2) states that "[c]ore proceedings include, but are not limited to- (A) matters concerning the administration of the estate . . . [and] (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims."

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

the consent of all parties to the proceeding. 28 U.S.C. § 157(c)(1).

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

A proceeding "arising under title 11" is one that "'invokes a substantive right provided by title 11.'" Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1081 (9th Cir. 2000) (quoting Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987)). A proceeding "arising in a case under title 11" is one that "'by its nature, could arise *only* in the context of bankruptcy case.'" Id. Finally, a proceeding is "related to a case under title 11" if its outcome could conceivably affect the administration of the estate. Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.), 167 B.R. 591, 595 (Bankr. N.D. Cal. 1994) (citing Fietz v. Great Western Savings (In Fietz), 852 F.2d 455, 457 (9th Cir. 1988)).

None of the pending claims in this proceeding are under title 11 or arise under title 11 as they do not invoke "substantive rights provided by title 11." They invoke either substantive rights provided by state law, such as the fraud claim, or invoke federal laws unrelated to title 11. None of the claims arise in a case under title 11 because they could easily arise in a context outside of a bankruptcy case. For example, the plaintiff may pursue her federal law claims in the district court, outside of this bankruptcy case. The claims are not related to a case under title 11 either because the trustee in the plaintiff's bankruptcy case has already administered the estate. He filed a report of no distribution on March 4, 2009, indicating that he has no interest in administering the alleged claims. Moreover, the instant motion demonstrates that consent of the parties for this court to enter appropriate orders and judgments is highly unlikely in this case. This court concludes then that it does not have jurisdiction over the claims in this proceeding. Accordingly, the motion will be granted and the adversary proceeding will be dismissed.

63. 09-32468-A-7 EDWARD BREWER

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
6-25-09 [5]

Tentative Ruling: The case will be dismissed.

The debtor did not file a Statement of Social Security Number, either with the petition or within 15 days of its filing, as required by Fed. R. Bankr. P. 1007(f). The trustee takes the debtor's social security number from this statement and includes it on the notice of the commencement of the case that is served on all creditors. Creditors frequently need the social security number to identify the debtor. Thus, the quality of notice may be substantially reduced and perhaps nullified by the absence of the social security number. 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). As a result, the failure to file the Statement of Social Security Number may be cause for dismissal. See 11 U.S.C. § 707(a)(1). While the debtor in this case belatedly filed the statement on July 12, this was not in time to include the social security number on the notice of the commencement of the case. It was served on or about June 25. Thus, the late filing caused prejudice to creditors.

64. 09-31569-A-7 THAVONG VONGSOUVANH HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
ONEWEST BANK FSB, VS. 7-9-09 [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, One West Bank, seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of $145,000 and it is encumbered by claims totaling approximately $358,264. The movant's deed is the only deed against the property, securing a claim of approximately $357,234.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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. 08-35072-A-7 ANDERSON CUSTOM BUILDERS CONT. HEARING - MOTION FOR
DGN #1 RELIEF FROM AUTOMATIC STAY
FORD MOTOR CREDIT CO., VS. 6-8-09 [10]

Tentative Ruling: The motion will be granted.

The movant, Ford Motor Credit Co., seeks relief from the automatic stay with respect to a 2006 Ford F-250. The movant has produced evidence that the vehicle has a value of approximately $20,450 and its secured claim totals approximately $50,298. See June 29, 2009 Declaration of Barbara Codd ¶5.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on November 29, 2008.

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.

66. 09-28572-A-7 JAMES/VERENA DAVALOS HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 6-30-09 [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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to real property in Citrus Heights, California. The property has a value of $320,000 and it is encumbered by claims totaling approximately $434,787. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on June 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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. 09-29674-A-7 HERITAGE DRYWALL, INC. HEARING - MOTION FOR
SW #2 RELIEF FROM AUTOMATIC STAY
GMAC, VS. 6-29-09 [27]

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

The motion will be granted.

The movant, GMAC, seeks relief from the automatic stay with respect to a 2006 Chevrolet C4500 truck. The vehicle has a value of $20,000 and its secured claim is approximately $35,025.

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 June 17, 2009.

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

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

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

68. 09-30374-A-7 MYKE JONES, III
WGM #1
LITTON LOAN SERVICING, LP, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
7-9-09 [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, Litton Loan Servicing, seeks relief from the automatic stay as to real property in Suisun City, California. The property has a value of $300,000 and it is encumbered by claims totaling approximately $496,043. See Statement of Financial Affairs item 5; see also Schedule F. The movant's deed is in first priority position, securing a claim for approximately $397,043.

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 financial affairs, the debtor has indicated that the property was foreclosed or surrendered pre-petition, in April 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

69. 09-27075-A-7 PATRICK BRADY AND HEARING - MOTION FOR
KAT #2 DEBRA HAGEDON RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 7-1-09 [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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to real property in Redding, California. The property has a value of $269,000 and it is encumbered by claims totaling approximately $450,213. The movant's deed is in first priority position and secures a claim of approximately $369,695.

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 June 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

70. 09-32275-A-7 JON/ELSA MCCHESNEY HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A., VS. 7-7-09 [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, JP Morgan Chase Bank, seeks relief from the automatic stay as to real property in Santa Clara, California. The property has a value of $150,000 and it is encumbered by claims totaling approximately $289,442. The movant's deed is in first priority position and secures a claim of approximately $223,898.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

71. 09-28276-A-7 HILDA ARIAS HEARING - MOTION FPR
JME #1 ORDER RELEASING LEVIED PROPERTY
6-25-09 [15]

Tentative Ruling: The motion will be denied.

The debtor moves the court to order the Los Angeles Sheriff's Department to release $2,721.23 in cash it had levied from the debtor.

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

Also, while the motion states that the funds were levied and that the debtor has exempted them in full, the motion does not explain why the debtor is entitled to the amount and on whose behalf the Sheriff's Department levied the funds.

Finally, the debtor has not served LN Acquisitions, a creditor which apparently has some interest in the funds. The debtor only served counsel for LN Acquisitions. Unless counsel for LN Acquisitions agreed to accept service, service was improper. See In re Villar, 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). The motion will be denied.

72. 09-31078-A-7 MIGUEL/MARIA LEPE HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-19-09 [10]

Tentative Ruling: The order to show cause will be discharged because it is moot.

The petition was filed on June 1. The debtor has not filed a statement of financial affairs or a statement of current monthly income (Form 22A) as required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on June 15. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was July 16. The schedules and statements were not filed on or before the 45th day. Thus, on July 17, the petition was automatically dismissed.

Despite discharging the order to show cause, the court will confirm the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2).

73. 09-32278-A-7 MILLE/STEVEN CURRINGTON HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-24-09 [4]

Tentative Ruling: The case will be dismissed.

The debtor failed to file a master address list with the petition as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. The deadline for filing the list has expired and the notice of the commencement of this bankruptcy case was served on or about June 24. Because no master address list has been filed, the notice was not served on all creditors. As a result, they were not notified that the case had been filed nor did they receive notice of the various deadlines for filing complaints, objecting to exemptions, and

filing proofs of claims. To permit the case to remain pending would be unfair to all creditors. Accordingly, the petition will be dismissed.

74. 09-32278-A-7 MILLE/STEVEN CURRINGTON HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-24-09 [5]

Tentative Ruling: The case will be dismissed.

The debtor did not file a Statement of Social Security Number, either with the petition or within 15 days of its filing, as required by Fed. R. Bankr. P. 1007(f). As a result, when creditors were served with notice of the commencement of the case, the court was unable to advise them of the debtor's social security number. Thus, the quality of notice has been substantially reduced and perhaps nullified. See Ellett v. Goldberg (In re Ellett), 317 B.R. 134 (Bankr. E.D. Cal. 2004), *affirmed* 328 B.R. 205 (E.D. Cal. 2005), *affirmed* 506 F.3d 774 (9th Cir. 2007). The failure to file the Statement of Social Security Number is cause for dismissal. See 11 U.S.C. § 707(a)(1).

75. 08-21879-A-7 JUGJEEV/MINERVA MANGAT HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-26-09 [193]
PD #1
NATIONAL CITY MORTGAGE CO., VS.

Tentative Ruling: The motion will be denied.

The movant, National City Mortgage, seeks relief from the automatic stay as to real property in Lodi, California. The property has a value of $416,977 and is encumbered by claims totaling approximately $387,266. Sale costs are not encumbrances for purposes of a section 362(d)(2) analysis. The movant holds both the first and second deeds against the property, but the motion relates only to the first deed, securing a claim in the amount of approximately $327,240. This leaves approximately $29,711 of equity in the property.

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

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

The movant's first deed also has an equity cushion of approximately $89,737. This equity cushion is sufficient to adequately protect the movant's interest in the property until the debtors obtain their 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. Thus, relief from stay under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied.

The parties shall bear their own fees and costs.

76. 09-30880-A-7 JASBIR DHAMI
KAT #1
BANK OF AMERICA N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-8-09 [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, Bank of America, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $175,000 and it is encumbered by claims totaling approximately $478,056. The movant's deed is in first priority position and secures a claim of approximately $237,554.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

77. 09-32282-A-7 AKRAM ALDAFARI HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 7-6-09 [12]

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $100 due on July 1 was not paid. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

78. 09-25583-A-7 JOSEFINA PADILLA HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-30-09 [14]
PD #1
AURORA LOAN SERVICES, LLC, VS.

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

The motion will be granted.

The movant, Aurora Loan Services, seeks relief from the automatic stay as to real property in Oakley, California. The property has a value of $153,000 and it is encumbered by claims totaling approximately $466,077. The movant's deed is in first priority position and secures a claim of approximately $419,021.

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 May 21, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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. 09-27983-A-7 MICHAEL/MARITZA BEAVERS HEARING - MOTION FOR
HRH #1 RELIEF FROM AUTOMATIC STAY
COLONIAL PACIFIC LEASING CORP., VS. 7-1-09 [14]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Colonial Pacific Leasing Corp., seeks relief from the automatic stay with respect to a bobcat loader, a trailer, and a breaker.

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 April 24, 2009 and a meeting of creditors was first convened on June 4, 2009. Therefore, a statement of intention that refers to the movant's equipment and debt was due no later than May 24. The debtor filed a statement of intention on the petition date, but did not list the subject equipment in it.

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, the debtor did not list the subject equipment in it. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on May 24, 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 section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on June 9, 2009, indicating an intent not to administer the equipment or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on May 24, 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.

80. 09-30883-A-11 TABLE 260 DOWNTOWN, INC. CONT. STATUS CONFERENCE 5-29-09 [1]

Tentative Ruling: None.

81. 09-30883-A-11 TABLE 260 DOWNTOWN, INC. HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-25-09 [8]

Tentative Ruling: The case will be dismissed.

Fed. R. Bankr. P. 1007(c) required that the debtor file schedules of assets and liabilities, a schedule of executory contracts, and a statement of financial affairs no later than 15 days after the filing of the petition. The 15-day period expired without any of these documents being filed. They were not filed until July 13, 45 days after the petition was filed.

According to the petition, the debtor is a small business debtor. Therefore, 11 U.S.C. § 1116 is applicable. Section 1116(1) requires a small business debtor to append to the petition its most recent balance sheet, statement of operations, cash-flow statement and federal income tax return, or, if any of these documents have not been prepared, a statement under penalty of perjury to that effect. A review of the petition reveals that these documents are not appended to the petition and a review of the docket reveals that they were not filed separate from the petition.

The failure to file these documents and the failure to file timely schedules and statements is cause for dismissal. See 11 U.S.C. § 707(a)(1).

82. 09-30883-A-11 TABLE 260 DOWNTOWN, INC. HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 7-8-09 [12]

Tentative Ruling: The case will be dismissed.

On June 2, the court issued an order requiring the debtor to file and serve a status report by June 23 and then appear at a status conference on July 6. No status report was filed and the debtor's representative failed to appear on July 6. The court then issued an order to show cause why the case should not be dismissed or other sanctions should not be meted out. The status conference was continued, and a hearing on the order to show cause, were set on July 24. Since the status conference, the debtor has still not filed a status report.

83. 09-21788-A-11 MC2 WINES
GJH #2

CONT. HEARING - TRUSTEE'S MOTION TO AUTHORIZE USE OF CASH COLLATERAL
4-16-09 [95] O.S.T.

Tentative Ruling: The motion will be denied.

This motion was continued from June 22 after the court approved a stipulation between the estate and the Bank of Alameda for use of cash collateral for July 2009. This is another interim hearing on the chapter 11 trustee's motion for use of cash collateral. However, the trustee has not filed anything indicating that further use of cash collateral is warranted, such as a stipulation or a report of the estate's financials. Hence, the motion will be denied.

84. 09-30694-A-7 WANDA TERRELL

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

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $100 due on June 30 was not paid. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

85. 08-24995-A-7 PEARL MCGINTY
MAS #1

HEARING - OBJECTION TO CLAIM OF SHANNON BENTLEY
6-4-09 [81]

Tentative Ruling: The objection will be sustained.

On August 4, 2008, claimant Shannon Bentley filed an unsecured proof of claim in the amount of $291,000 (claim no. 1). The claim states that it is based on a judgment for rescission of contract and fraud. No documentation is attached to the proof of claim.

The debtor objects to the claim on the grounds that the claimant never obtained the referenced judgment. Given the absence of a judgment, a claim based on such nonexistent judgment must be disallowed. Further, because the proof of claim contains no information regarding a breach of contract and/or fraud claim, it cannot be allowed as an unliquidated claim.

86. 09-27895-A-7 JASON/SALLY OTTOLINI
PD #1
WELLS FARGO BANK, N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
7-1-09 [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, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of $287,000 and it is encumbered by claims totaling approximately $449,008. 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 May 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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. 09-28395-A-7 WILLIAM/CHRISTY LOWERY
KAT #1
ONE WEST BANK FSB, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
7-1-09 [21]

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

The motion will be granted.

The movant, One West Bank, seeks relief from the automatic stay as to real property in Shasta Lake, California. The property has a value of $124,150 and

it is encumbered by claims totaling approximately $203,846. 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

88. 09-29495-A-7 ANDREW ZONGUS
KAT #1
ONE WEST BANK FSB, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
7-3-09 [15]

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

The motion will be granted.

The movant, One West Bank, seeks relief from the automatic stay as to real property in Pollock Pines, California. The property has a value of $200,000 and it is encumbered by claims totaling approximately $270,273. The movant's deed is the only deed against the property, securing a claim of approximately $269,037.

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 June 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

89. 09-31896-A-7 TONY/AMY RIVERS
WGM #1
JPMORGAN CHASE BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-7-09 [16]

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

The motion will be granted.

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay as to real property in Lincoln, California. The property has a value of $317,500 and it is encumbered by claims totaling approximately $433,779. The movant's deed is in first priority position and secures a claim of approximately $332,014.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

90. 09-30498-A-7 JUANITO DELA CRUZ

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
6-30-09 [18]

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $75 due on June 25 was not paid. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

91. 09-31798-A-7 SUSAN TISDALE

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
6-30-09 [10]

Tentative Ruling: The case will be dismissed.

11 U.S.C. § 521(a)(1) and Fed. R. Bankr. P. 1007(b) & (c) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures (Form 22A), a schedule of executory contracts, and a statement of current monthly income no later than 15 days after the filing of the petition. The 15-day period has expired and none of these documents have been filed. By failing to file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(3).

92. 09-29399-A-7 HELEN SEAH
KAT #1
AURORA LOAN SERVICES, LLC, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
7-1-09 [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, Aurora Loan Services, seeks relief from the automatic stay as to real property in Chico, California. The property has a value of $250,000 and it is encumbered by claims totaling approximately $361,820. The movant's deed is in first priority position and secures a claim of approximately $311,715.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

FINAL RULINGS BEGIN HERE

93. 05-21801-A-7 THOMAS/MARIA SOLVESON
PEQ #1

HEARING - MOTION FOR FIRST AND FINAL ALLOWANCE OF COMPENSATION TO ACCOUNTANT FOR TRUSTEE ($4,585.00)
6-23-09 [283]

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

The application will be granted.

Ryan, Christie, Quinn & Horn, accountant for the trustee, has filed its first and final application for approval of compensation. The requested compensation consists of $4,585 in fees and $0 in expenses. This application covers the period from October 4, 2005 through May 7, 2009. The court approved the applicant's employment as the estate's accountant on October 21, 2005. In performing its services, the applicant charged hourly rates of $175 and $200.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The applicant's services included the preparation and filing of the estate's 2005, 2006 and 2007 tax returns.

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

94. 05-21801-A-7 THOMAS/MARIA SOLVESON
WSD #22

HEARING - VERIFIED MOTION BY WENDY DEZZANI FOR A FIRST AND FINAL ALLOWANCE OF COMPENSATION AS COUNSEL FOR TRUSTEE ($20,665.50 FEES; $715.98 EXPENSES)
6-23-09 [288]

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

The application will be granted.

Wendy Dezzani, Attorney at Law (formerly with Meegan, Hanschu & Kassenbrock), attorney for the trustee, has filed its first and final application for approval of compensation. The requested compensation consists of $20,665.50 in fees and $715.98 in expenses, for a total of $21,381.48. This application covers the period from September 4, 2008 through June 22, 2009. The court approved the applicant's employment as the trustee's attorney by granting a request for substitution of counsel on September 5, 2008. In performing its services, the applicant charged hourly rates of $115 and $275.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The applicant's services included, without limitation: (1) analyzing claims against the estate; (2) preparing and prosecuting objections to claims; (3) preparing and prosecuting employment and compensation applications; and (4) advising the trustee about the general administration of the estate.

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

95.	09-29502-A-7 MBB #1 COUNTRYWIDE BANK, FSB, VS.	ASHFAQ KHAN AND FAROOQA ASHFAQ	HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-9-09 [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, Countrywide Bank, seeks relief from the automatic stay as to real property in Fair Oaks, California. The property has a value of $374,000 and it is encumbered by claims totaling approximately $477,531. The movant's deed is in first priority position, securing a claim for approximately $421,922. See Amended Schedule D.

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. Further,

upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

96. 09-30202-A-7 PACIFIC COAST MASONRY, INC. HEARING - MOTION FOR
THB #1 RELIEF FROM AUTOMATIC STAY
CNH CAPITAL AMERICA, LLC, VS. 6-24-09 [10]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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, CNH Capital America, seeks relief from the automatic stay with respect to a case excavator. The movant has produced evidence that the equipment has a value of $21,266 and its secured claim is approximately $32,500.

The court concludes that there is no equity in the equipment and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. Further, the debtor has not made three pre-petition and one post-petition payments to the movant. And, the equipment was repossessed pre-petition, in October or November 2008. See Jennifer Jarrett Declaration ¶12; see also Statement of Financial Affairs item 5. This is cause for the granting of relief from stay.

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

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

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

value.

97. 09-29806-A-7 CURTIS/HARMONY PETERSON HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 6-23-09 [11]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Pacific Trust Mortgage, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $599,250 and it is encumbered by claims totaling approximately $907,714. The movant's deed is in first priority position and secures a claim of approximately $707,687.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

98. 09-28207-A-7 ALEJANDRO/SUSANNA GONZALEZ HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, VS. 6-25-09 [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, JP Morgan Chase Bank, seeks relief from the automatic stay as to real property in Santa Rosa, California. The property has a value of $156,000 and it is encumbered by claims totaling approximately $339,712. The movant's deed is in first priority position and secures a claim of approximately $274,712.

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 June 3, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

99. 09-29607-A-7 MICHAEL/KRISTINA RILEY HEARING - MOTION FOR
MDE #1 RELIEF FROM AUTOMATIC STAY
CITIMORTGAGE, INC., VS. 6-24-09 [10]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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, Citimortgage, Inc., seeks relief from the automatic stay as to real property in Red Bluff, California. The property has a value of $140,000 and it is encumbered by claims totaling approximately $197,514. 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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. 09-31807-A-7 JENNIFER KAWATE
EGS #1
GUILD MORTGAGE CO., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
7-1-09 [10]

Final Ruling: The motion will be dismissed without prejudice.

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

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less

than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

101. 09-24608-A-7 JOHN WALLS
PD #1
WELLS FARGO BANK, N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-23-09 [11]

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

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

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Benicia, California.

Given the entry of the debtor's discharge on July 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 $250,000 and it is encumbered by claims totaling approximately $329,225. 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 $294,225.

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 May 19, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

102. 09-25208-A-7 STEVE/KARIN KERN
RSL #1
BANK OF AMERICA, N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-26-09 [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 in part and will be dismissed in part.

The movant, Bank of America, seeks relief from the automatic stay with respect to a 2005 Hyundai Sonata.

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

As to the estate, the analysis is different. The vehicle has a value of $4,825 and its secured claim is approximately $10,747.

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 May 6, 2009 and that the vehicle has been surrendered to the movant. This is cause for the granting of relief from stay.

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

103. 09-30908-A-7 MICHELLE WILDE HEARING - MOTION TO
ADS #1 COMPEL TRUSTEE TO ABANDON PROPERTY
7-10-09 [13]

Final Ruling: The motion will be dismissed without prejudice because it has not been served on all creditors as required by Fed. R. Bankr. P. 6007(a).

104. 09-29909-A-7 JAMES DAVISON AND HEARING - MOTION FOR
JHW #1 MENG SHEN RELIEF FROM AUTOMATIC STAY
CHRYSLER FIN'L SVCS. AMERICAS LLC, VS. 6-16-09 [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, Chrysler Financial Services Americas, seeks relief from the automatic stay with respect to a leased 2007 Dodge Ram 2500. The vehicle has a value of $29,000 according to Schedule D and the outstanding amount under the lease agreement totals $36,917. The debtor also has not made two pre-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 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.

105. 09-29311-A-7 SCOTT/ROCHELE THURMAN HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
CHRYSLER FIN'L SVCS. AMERICAS LLC, VS. 6-18-09 [12]

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

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

The motion will be granted.

The movant, Chrysler Financial Services Americas, seeks relief from the automatic stay with respect to a 2006 Dodge Ram 1500. The vehicle has a value of $15,300 and its secured claim is approximately $33,850.

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 June 22, 2009.

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

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

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

106. 09-30312-A-7 STEVEN/AMBER BERNHARD HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 6-24-09 [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, Mortgage Electronic Registration Systems, Inc., as nominee for Litton Loan Servicing, seeks relief from the automatic stay as to real property in Orangevale, California. The property has a value of $185,000 and it is encumbered by claims totaling approximately $279,165. The movant's deed is in first priority position and secures a claim of approximately $223,182.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 3, 2009.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

107. 09-26415-A-7 FALLON/BRENDA VAUGHAN HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 6-24-09 [12]

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

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to real property in Lincoln, California. The property has a value of $545,000 and it is encumbered by claims totaling approximately $1,485,471. The movant's deed is in first priority position, securing a claim of approximately $1,122,920.

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 June 16, 2009.

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

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

upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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. 09-29815-A-7 BRUCE BALDWIN AND HEARING - MOTION FOR
KAT #1 CAROLYN HUMPHREY RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 6-26-09 [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, JP Morgan Chase Bank, seeks relief from the automatic stay as to real property in El Dorado Hills, California. The property has a value of $655,000 and it is encumbered by claims totaling approximately $687,978. 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 June 17, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

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

109. 09-31515-A-7 DARICE WASHINGTON
APN #1
WELLS FARGO FINANCIAL, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-23-09 [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 Financial, seeks relief from the automatic stay with respect to a 2001 Audi A6. The vehicle has a value of $9,450 and its secured claim is approximately $13,844. See Statement of Financial Affairs item 5.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. And, in the statement of financial affairs, the debtor has indicated that the vehicle was repossessed pre-petition, on or about June 5, 2009. This is cause for the granting of relief from stay.

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

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

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

110. 09-26516-A-7 BETTY CANTON
DMM #1
WACHOVIA MORTGAGE, FSB, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-23-09 [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, Wachovia Mortgage, seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of $192,500 and it is encumbered by claims totaling approximately $388,482. 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 $308,184.

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 May 18, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

111. 09-30817-A-7 MELISSA JOHNS HEARING - MOTION FOR
MET #1 RELIEF FROM AUTOMATIC STAY
AMERICAN HONDA FINANCE CORPORATION, VS. 6-22-09 [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, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a leased 2005 Acura MDX. The vehicle has a value of $21,065 and the outstanding amount under the lease agreement totals $22,672. The debtor also has not made one pre-petition and one 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 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.

112. 09-29819-A-7 DAVID FREILICH
MET #1
BANK OF THE WEST, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-22-09 [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 the West, seeks relief from the automatic stay with respect to a 2005 Layton Rampage travel trailer. The vehicle has a value of $18,000 in Schedule B and its secured claim is approximately $19,411.

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 July 8, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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

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

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

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

113. 09-31119-A-11 ROSE GLASS AND ALUMINUM, INC HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-19-09 [29]

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

According to the petition, the debtor is a small business debtor. Therefore, 11 U.S.C. § 1116 is applicable. Section 1116(1) requires a small business debtor to append to the petition its most recent balance sheet, statement of operations, cash-flow statement and federal income tax return, or, if any of these documents have not been prepared, a statement under penalty of perjury to that effect. A review of the petition reveals that these documents are not appended to the petition. However, a review of the docket reveals that they were filed separate from the petition on June 26. No prejudice resulted from the delayed filing of the documents.

114. 09-28121-A-7 JERMAN QUINONES AND CYNTHIA MENDOZA HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
WGM #1
ONEWEST BANK FSB, VS. 6-25-09 [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, One West Bank, seeks relief from the automatic stay as to real property in Fair Oaks, California. The property has a value of $229,000 and it is encumbered by claims totaling approximately $489,498. 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 May 23, 2009. And, in the

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

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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. 09-24922-A-7 CLAIRE CROWSON HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 6-22-09 [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 real property in El Dorado Hills, California. The property has a value of $435,000 and it is encumbered by claims totaling approximately $461,618. The movant's deed is in first priority position and secures a claim of approximately $403,544.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

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

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

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

116. 09-26122-A-7 DENNIS STEINKE
RCO #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-23-09 [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, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to real property in Redding, California. The property has a value of $165,000 and it is encumbered by claims totaling approximately $180,708. 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 May 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

117. 09-28522-A-7 ROY MITTLEIDER, JR. HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 6-18-09 [12]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to real property in Pollock Pines, California. The property has a value of $250,000 and it is encumbered by claims totaling approximately $328,813. The movant's deed is in first priority position and secures a claim of approximately $230,498.

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 June 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

118. 09-31324-A-7 NICOLAE MATISOI AND RODICA JURCUT — HEARING - MOTION TO COMPEL TRUSTEE TO ABANDON PROPERTY 6-11-09 [14]

Final Ruling: The motion will be dismissed without prejudice.

While the motion was brought on 28 days or more of notice, the notice of hearing states that written opposition must be filed on or before July 9, 15 days before the hearing. However, motions noticed on at least 28 days' notice of the hearing are brought pursuant to Local Bankruptcy Rule 9014-1(f)(1), which requires that written opposition be filed 14 days before the hearing. Hence, the notice of this motion is defective.

Also, the motion will be dismissed because it has not been served on all creditors as required by Fed. R. Bankr. P. 6007(a).

Finally, the motion violates Local Bankruptcy Rule 9014-1(c), which requires all motions to have a docket control number. None of the pleadings of this motion have a docket control number. 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.

119. 09-31624-A-7 DONALD SCHRIBER — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-25-09 [7]
RCO #1
BANK OF AMERICA, N.A., VS.

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to real property in Hidden Valley Lake, California. The property has a value of

$29,000 and it is encumbered by claims totaling approximately $32,296. 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

120. 09-31127-A-7 ARASH GANJBAKHSH

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
7-7-09 [13]

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

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $75 due on June 30 was not paid timely. However, it was paid on July 10. No prejudice resulted from the late payment.

121. 09-25328-A-7 SALEDA MORELAND
LSP #1
A-L FINANCIAL, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-23-09 [13]

Final Ruling: The motion will be dismissed without prejudice because the notice of hearing violates Local Bankruptcy Rule 9014-1(d)(3). This rule requires the notice of hearing to indicate whether and when written opposition must be filed. The subject notice of hearing, erroneously titled notice of motion, does not indicate whether and when written oppositions must be filed. It states only that "failure to appear personally or by counsel at the preliminary hearing, or failure to file written opposition . . . may result in the court granting the requested relief."

The court also notes that, unlike stated by the notice of hearing, the July 24 hearing on this motion would not have been a preliminary hearing as the movant

has given 31 days' notice of the motion. See Local Bankruptcy Rule 9014-1(f)(1)(ii) and (iii). Given this information, the notice of the hearing should have informed parties in interest that written opposition was due 14 days prior to the hearing and that the failure to file it might result in the motion being resolved without oral argument.

122. 09-25828-A-7 RICHARD SARRO
PD #1
JP MORGAN CHASE BANK, N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-27-09 [23]

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

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

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay as to real property in Port Orange, Florida.

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

As to the estate, the analysis is different. The property has a value of $75,000 and it is encumbered by claims totaling approximately $186,271. The movant's deed is in first priority position and secures a claim of approximately $165,871.

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 30, 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.

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

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

123. 09-28128-A-7 JOSE/GUADALUPE TREJO HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK N.A., VS. 6-15-09 [26]

Final Ruling: The motion will be dismissed without prejudice.

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

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

124. 09-30328-A-7 ALICIA MARTELLI HEARING - MOTION FOR
MDZ #1 RELIEF FROM AUTOMATIC STAY
FEDERAL HOME LOAN MTG. CORP., VS. 7-2-09 [18]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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, Federal Home Loan Mortgage Corporation, seeks relief from the automatic stay as to real property in Roseville, California. The movant purchased the property at a pre-petition foreclosure sale, on May 11, 2009. The debtor filed the instant petition on May 22, 2009.

This is a liquidation proceeding and the debtor has no interest in the property as the movant purchased it pre-petition. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed under applicable nonbankruptcy law to obtain possession of the property. The movant may 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.

125. 09-26729-A-7 MICHAEL/SHANNON DE AVILA HEARING - MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 6-24-09 [13]

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

The motion will be granted.

The movant, Wachovia Mortgage, seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of $150,000 and it is encumbered by claims totaling approximately $325,170. The movant's deed is in first priority position and secures a claim of approximately $236,267.

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 May 18, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

126. 09-28629-A-7 YASUHARU/CORINA MATAYOSHI HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 6-25-09 [18]

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

failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 real property in Vallejo, California. The property has a value of $415,000 and it is encumbered by claims totaling approximately $532,590. The movant holds both the first and second deeds against the property, but the motion relates only to the second deed, securing a claim of approximately $110,970.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

127. 09-28629-A-7 YASHUHARU/CORNIA MATAYOSHI HEARING - MOTION FOR
RCO #2 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 6-18-09 [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 America, seeks relief from the automatic stay as to real property in Vallejo, California. The property has a value of $415,000 and it is encumbered by claims totaling approximately $532,590. 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 $421,620.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

128. 09-30829-A-7 FABIAN VASQUEZ HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 7-8-09 [11]

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

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $75 due on July 1 was not paid timely. However, it was paid on July 10. No prejudice resulted from the late payment.

129. 09-31029-A-7 PATRICK/BROOK BISIO HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-23-09 [7]
WGM #1
ONE WEST BANK, FSB, VS.

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

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

The motion will be granted.

The movant, One West Bank, seeks relief from the automatic stay as to real property in Machester, California. The property has a value of $130,000 and it is encumbered by claims totaling approximately $133,201. 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 July 9, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

130. 09-30830-A-7 GREG/SHELBY ARMSTRONG
PD #1
BANK OF AMERICA N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-26-09 [10]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to real property in Roseville, California. The property has a value of $412,500 and it is encumbered by claims totaling approximately $588,337. 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 $497,738.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

131. 09-27431-A-7 STEPHEN/LAINI SWADLING HEARING - MOTION FOR
ASW #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 6-24-09 [14]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to real property in Carmichael, California. The property has a value of $190,000 and it is encumbered by claims totaling approximately $342,422. The movant's deed is in first priority position and secures a claim of approximately $279,218.

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 June 5, 2009.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

132. 09-25134-A-7 WILLIAM/CAROLYN TURNER HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-24-09 [31]

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

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $75 due on June 22 was not paid timely. However, it was paid on June 26. No prejudice resulted from the late payment.

133. 09-27734-A-7 ROBERT/SELMY BORGES HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-17-09 [14]
WFZ #1
INDYMAC BANK FSB, VS.

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

The motion will be granted.

The movant, Indymac Bank, seeks relief from the automatic stay as to real property in Woodland, California. The property has a value of $200,000 and it is encumbered by claims totaling approximately $336,001. The movant's deed is in first priority position and secures a claim of approximately $286,531.

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 June 3, 2009.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

134. 09-29634-A-7 OLIVIA RODRIGUES-NELSON HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
BANC OF AMERICA, ETC., VS. 6-18-09 [12]

Final Ruling: The motion will be dismissed without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1 because when it was filed it was not accompanied by a separate proof of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar. The motion will be dismissed without prejudice.

Also, 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.

135. 09-25135-A-7 ALAN/LINDA ZACHARY
DJD #1
PROVIDENT FUNDING ASSOC., L.P., VS.

HEARING - AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
6-29-09 [32]

Final Ruling: Both the original motion and the amended motion will be dismissed without prejudice.

The amended motion will be dismissed because it was filed and served on June 29, less than 28 days prior to the hearing on the motion, yet the movant did not file an amended notice of hearing that complies with Local Bankruptcy Rule 9014-1(f)(2). That is, the notice of the hearing did not inform potential respondents that they were not required to file written opposition to the motion but could oppose the motion by appearing at the hearing.

While the notice of hearing filed on June 23, 2009 complied with the requirements of Local Bankruptcy Rule 9014-1(f)(1), the motion accompanying it is unrelated to the debtors or property in this case. The original motion references case no. 09-25123, debtors Stephen and Medy Podliska, and a real property located in San Rafael, California.

136. 09-28835-A-7 DAVID/BRENDA YOUNG

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
7-8-09 [16]

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

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $74.75 due on July 6 was not paid timely. However, it was paid on July 8. No prejudice resulted from the late payment.

137. 09-25536-A-7 QUOC HO AND NHU TRAN
PD #1
OCWEN LOAN SERVICING, LLC, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-19-09 [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 in part and dismissed in part.

The movant, Ocwen Loan Servicing, seeks relief from the automatic stay as to real property in Sacramento, California.

Given the entry of the debtor's discharge on July 8, 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 May 7, 2009. 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 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

The property has a value of $300,000 and it is encumbered by claims totaling approximately $290,986. The movant's deed is in first priority position and secures a claim of approximately $258,986.

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

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

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

Alternatively, if the debtor will stipulate to an award of fees and costs not

to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

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

138. 09-29236-A-7 DYAN MARBA
PD #1
DEUTSCHE BANK NAT'L TRUST CO., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-19-09 [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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to real property in Grass Valley, California. The property has a value of $200,000 and it is encumbered by claims totaling approximately $402,106. The movant's deed is in first priority position and secures a claim of approximately $234,140.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on June 22, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

terminating the automatic stay.

139. 09-26637-A-7 LETICIA/RODOLFO ABESAMIS HEARING - MOTION FOR
JDL #1 RELIEF FROM AUTOMATIC STAY
DOWNEY SAVINGS & LOAN ASSN., F.A., VS. 6-25-09 [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, Downey Savings and Loan, seeks relief from the automatic stay as to real property in Elk Grove, California. The property has a value of $175,000 and it is encumbered by claims totaling approximately $405,819. The movant's deed is the only deed against the property, securing a claim of approximately $403,694.

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 May 23, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

140. 08-38838-A-7 FERNANDO/EVELYN ALEJO HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-29-09 [51]

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

After converting the case from chapter 13 to chapter 7, the debtor failed to file Form 22A. However, that form was filed on July 14. No prejudice resulted from the short delay in filing the document.

141. 09-27938-A-7 GUILLERMO/ROSARIO ORDILLAS HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-16-09 [14]
MDE #1
CITIMORTGAGE, INC., VS.

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

The motion will be granted.

The movant, Citimrtgage, Inc., seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of $180,000 and it is encumbered by claims totaling approximately $461,793. 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 June 9, 2009.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period,

however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

142. 09-26840-A-7 MARK GORDON
PD #1
JP MORGAN CHASE BANK, N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-16-09 [14]

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

The motion will be granted.

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay as to real property in Roseville, California. The property has a value of $540,000 and it is encumbered by claims totaling approximately $947,292. The movant's deed is in first priority position and secures a claim of approximately $692,714.

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 May 26, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

143. 09-25342-A-7 STEVEN/ELIZABETH SPERRY HEARING - MOTION FOR
PPR #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A., VS. 6-22-09 [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, U.S. Bank, seeks relief from the automatic stay as to real property in Elk Grove, California. The property has a value of $350,000 and it is encumbered by claims totaling approximately $553,496. 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 $519,324.

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

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

144. 09-29142-A-7 ANNA CRAIG HEARING - MOTION FOR
MDE #1 RELIEF FROM AUTOMATIC STAY
CITIMORTGAGE, INC., VS. 6-16-09 [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, Citimortgage, Inc., seeks relief from the automatic stay as to real property in El Dorado Hills, California. The property has a value of $316,000 and it is encumbered by claims totaling approximately $358,326. The movant's deed is in first priority position and secures a claim of approximately $303,326.

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 June 9, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

145.	09-30342-A-7 ASW #1 MTG. ELECTR. REGIS. SYS., INC., VS.	LEONARD DEMPSEY AND JULIE RAND	HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-11-09 [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, Mortgage Electronic Registration Systems, Inc., as nominee for Sun Trust Mortgage, Inc., seeks relief from the automatic stay as to real property in El Dorado Hills, California. The property has a value of $500,000 and it is encumbered by claims totaling approximately $727,729. The movant's deed is in first priority position and secures a claim of approximately $676,100.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 1, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil

Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

146. 09-29544-A-7 TERRENCE MAYHORN HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
CHRYSLER FIN'L SVCS. AMERICAS LLC, VS. 6-16-09 [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, Chrysler Financial Services Americas, seeks relief from the automatic stay with respect to a 2006 Dodge Ram 1500. The vehicle has a value of $16,364 and its secured claim is approximately $17,065.

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

147. 08-35845-A-7 EVELYN KENDRICK HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-23-09 [25]

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

After converting the case from chapter 13 to chapter 7, the debtor failed to file Form 22A. However, that form was filed on June 23. No prejudice resulted from the short delay in filing the document.

148. 09-25847-A-7 ROBERT FENSKE HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-25-09 [13]
PD #1
DEUTSCHE BANK NAT'L TRUST CO., VS.

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

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

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to real property in Grass Valley, California.

Given the entry of the debtor's discharge on July 9, 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 $350,000 and it is encumbered by claims totaling approximately $493,679. The movant's deed is in first priority position and secures a claim of approximately $404,396.

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 May 5, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil

Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

149. 09-27647-A-7 VOLODYMYR/SVETLANA DUBINSKY HEARING - MOTION FOR
FWK #1 RELIEF FROM AUTOMATIC STAY
JOEMAR LTD., VS. 6-23-09 [32]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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, Joemar, Ltd, seeks relief from the automatic stay as to its interest in a first deed of trust against lot of land 126 with an unfinished home in Copperopolis, California.

Both the debtors and the trustee have filed non-opposition responses to the motion.

The property is not listed in the debtor's schedules or statements. The movant asserts that the property has a value of approximately between $10,000 and $20,000. The movant further asserts that the encumbrances against the property total at least approximately $565,000. They consist of the movant's first deed against the property, securing a claim of $180,000 and a second deed of trust, securing a claim of $365,000. But, the second deed is held by seven fractional interest holders. Debtor Svetlana Dubinsky owns 4.11% interest in the second deed.

The debtor's ownership interest in a deed of trust against the subject property is not the same as having an ownership interest in the property. The debtor does not have ownership interest in the property. It has only a 4.11% interest in a second deed of trust against the property. Hence, determining equity in the property, for purposes of section 362(d)(2), is not the proper analysis here.

On the other hand, by having interest in the second deed against the property, the debtor's rights are limited to the state law rights of a junior deed of trust holder, including the right to reinstatement, right to redemption, right to collect rents, right to bid for the property at a foreclosure sale, right to

receive notice of a default on a senior lien, and right to take title to property in lieu of foreclosure. For purposes of the automatic stay, then, only actions that would hamper the debtor's junior lienholder rights would violate the automatic stay. Harsh Inv. Corp. v. Bialac (In re Bialac), 712 F.2d 426, 432 (9th Cir. 1983).

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

Also, the court has no evidence that either the estate or the debtor has sufficient funds to exercise the reinstatement or redemption rights. The schedules list no funds on hand. Moreover, both the debtors and the trustee have stated that they do not oppose the granting of relief from the automatic stay. The above is cause for the granting of relief from stay.

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

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

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

150. 08-34449-A-7 CYNTHIA LEWIS HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
THE BANK OF NEW YORK MELLON, VS. 6-22-09 [52]

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, The Bank of New York Mellon, seeks relief from the automatic stay as to real property in Somerset, California. The property has a value of $350,000 and it is encumbered by claims totaling approximately $424,172. The movant's deed is in first priority position and secures a claim of approximately $322,610.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

151. 09-28949-A-7 DARREN/YOLANDA ROGERS HEARING - MOTION FOR
JDL #1 RELIEF FROM AUTOMATIC STAY
DOWNEY SAVINGS & LOAN ASSN., F.A., VS. 6-25-09 [14]

Final Ruling: This motion for relief from the automatic stay has been set for

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

The motion will be granted.

The movant, Downey Savings and Loan Association, seeks relief from the automatic stay as to real property in Fairfield, California. The property has a value of $250,000 and it is encumbered by claims totaling approximately $492,488. The movant's deed is the only encumbrance against the property, securing a claim of approximately $487,973.

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 June 25, 2009.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

152. 09-26451-A-7 DAVID/SANDIE HILL
WGM #1
HSBC MORTGAGE SERVICES, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-25-09 [17]

Final Ruling: When this motion was on June 25, 2009, it was accompanied by a notice of hearing stating that written opposition had to be filed at least 14 days before the hearing. See Local Bankruptcy Rile 9014-1(f)(1). However, the motion was served on debtor Sandie Hill at an incorrect address, 17055 Fawn Ln. Corning, CA 96021. The bankruptcy petition states that her address is 725 Bell St. New Braunfels, Texas 78130. While the movant re-served Ms. Hill at the correct address on July 8, 2009, the movant did not amend the notice of the hearing to comply with Local Bankruptcy Rule 9014-1(f)(2). That is, because

Ms. Hill was given effective notice of the hearing of less than 28 days, she should have been informed in an amended notice of hearing that she was not required to file written opposition to the motion. Instead, she could appear at the hearing and raise her opposition orally. Because she was not informed of this right, notice was defective and the motion will be dismissed without prejudice.

153. 09-27551-A-7 GERALD FOUNTAINE HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
ONE WEST BANK, FSB, VS. 6-18-09 [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, One West Bank, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $200,000 and it is encumbered by claims totaling approximately $369,836. 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 May 26, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

154. 09-21552-A-7 MARSHALL/MARY ROSE HEARING - MOTION TO
ADS #4 COMPEL TRUSTEE TO ABANDON PROPERTY
7-10-09 [41]

Final Ruling: The motion will be dismissed without prejudice because it has not been served on all creditors as required by Fed. R. Bankr. P. 6007(a).

Also, the motion and supporting declaration contain contradictory assertions. The declaration of the Roses states that "[i]t is our belief that the current amount due to Capital One Auto Finance, Inc. is $900.00." Marshall and Mary Rose Declaration ¶ 3. On the other hand, the motion states that Capital One "has a secured interest in said collateral for $2,379.68." Motion ¶ 2.

Finally, statements made on information or belief are not admissible evidence. This may be a correct form for verifying a pleading, but it is not the correct form for a declaration. As it is phrased, this means that the declarants have no personal knowledge of the factual assertions in the declaration; they are stating, not that the facts are true, only that they do not know them to be false. This evidence is unpersuasive and inadmissible.

155. 09-21552-A-7 MARSHALL/MARY ROSE HEARING - MOTION TO
ADS #5 COMPEL TRUSTEE TO ABANDON PROPERTY
7-10-09 [46]

Final Ruling: The motion will be dismissed without prejudice because it has not been served on all creditors as required by Fed. R. Bankr. P. 6007(a).

Also, the motion and supporting declaration contain contradictory assertions. The declaration of the Roses states that "[i]t is our belief that the current amount due to Capital One Auto Finance, Inc. is $4036.86." Marshall and Mary Rose Declaration ¶ 3. On the other hand, the motion states that Capital One "has a secured interest in said collateral for $2,379.68." Motion ¶ 2.

Finally, statements made on information or belief are not admissible evidence. This may be a correct form for verifying a pleading, but it is not the correct form for a declaration. As it is phrased, this means that the declarants have no personal knowledge of the factual assertions in the declaration; they are stating, not that the facts are true, only that they do not know them to be false. This evidence is unpersuasive and inadmissible.

156. 09-21552-A-7 MARSHALL/MARY ROSE HEARING - MOTION TO
ADS #6 COMPEL TRUSTEE TO ABANDON PROPERTY
7-10-09 [51]

Final Ruling: The motion will be dismissed without prejudice because it has not been served on all creditors as required by Fed. R. Bankr. P. 6007(a).

Also, the motion and supporting declaration contain contradictory assertions. The declaration of the Roses states that "[i]t is our belief that the current amount due to Americredit is $500." Marshall and Mary Rose Declaration ¶3. On the other hand, the motion states that Americredit "has a secured interest in said collateral for $2185.89." Motion ¶ 2.

Finally, statements made on information or belief are not admissible evidence. This may be a correct form for verifying a pleading, but it is not the correct form for a declaration. As it is phrased, this means that the declarants have no personal knowledge of the factual assertions in the declaration; they are

stating, not that the facts are true, only that they do not know them to be false. This evidence is unpersuasive and inadmissible.

157. 09-31052-A-7 ALLAN/CATHERINE DINGMAN HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE, LLC, VS. 6-23-09 [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, Chase Home Finance, seeks relief from the automatic stay as to real property in Key West, Florida. The property has a value of $275,000 and it is encumbered by claims totaling approximately $624,962. 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.

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.

158. 09-31052-A-7 ALLAN/CATHERINE DINGMAN HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 6-25-09 [14]

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

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to real property in Westwood, California. The property has a value of $85,000 and it is encumbered by claims totaling approximately $164,321. The movant's deed is in first priority position and secures a claim of approximately $64,321.

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

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

159. 09-30255-A-7 MANUEL/EVANGELINA RAMOS HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 6-22-09 [9]

Final Ruling: The motion will be dismissed without prejudice.

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

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

160. 09-28057-A-7 CLAUDIA RODRIGUEZ-JOCHIMS HEARING - MOTION FOR
MDE #1 RELIEF FROM AUTOMATIC STAY
CITIMORTGAGE, INC., VS. 6-16-09 [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, Citimortgage, Inc., seeks relief from the automatic stay as to real property in Roseville, California. The property has a value of $390,000 and it is encumbered by claims totaling approximately $643,288. The movant's deed is in first priority position and secures a claim of approximately $335,323.

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 June 2, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

161. 09-30157-A-7 IAN/TIFFANY TAMBUNTING HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK NATIONAL ASSOC., VS. 6-26-09 [10]

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

The motion will be granted.

The movant, U.S. Bank, seeks relief from the automatic stay as to real property in Elk Grove, California. The property has a value of $250,000 and it is encumbered by claims totaling approximately $500,707. The movant's deed is in first priority position and secures a claim of approximately $400,707.

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 June 30, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

162. 09-30957-A-7 OSCAR/ANA VILLASENOR HEARING - MOTION FOR
PPR #1 RELIEF FROM AUTOMATIC STAY
RESMAE MORTGAGE, VS. 6-15-09 [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, ResMAE Mortgage, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $115,000 and it is encumbered by claims totaling approximately $261,063. 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

163. 09-32057-A-7 WILLIAM/EDNA GREEN
PD #1
WELLS FARGO HOME MORTGAGE, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-26-09 [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, Wells Fargo Home Mortgage, seeks relief from the automatic stay as to real property in Cameron Park, California. The property has a value of $257,000 and it is encumbered by claims totaling approximately $360,910. 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 $245,149.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

164. 09-29565-A-7 GARY TALAUGON HEARING - MOTION FOR
JMS #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE, LLC, VS. 6-8-09 [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 real property in Winters, California. The property has a value of $675,000 and it is encumbered by claims totaling approximately $960,156. The movant's deed is in first priority position and secures a claim of approximately $898,156.

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 June 6, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

165. 09-27566-A-7 MICHAEL/NANCY BAKER
KAT #1
WELLS FARGO BANK N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-22-09 [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, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Georgetown, California. The property has a value of $299,000 and it is encumbered by claims totaling approximately $417,792. The movant's deed is the only deed against the property, securing a claim of approximately $416,517.

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 June 2, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

166. 08-34068-A-7 HECTOR/YASMIRA RODRIGUEZ CONT. HEARING - MOTION FOR
09-2013 JMO #1 SUMMARY JUDGMENT
AMERICAN EXPRESS CENTURION BANK, VS. 5-11-09 [14]
HECTOR/YASMIRA RODRIGUEZ

Final Ruling: Because the defendants failed to file evidence as required by the court, the court entered judgment on July 15 for the reasons explained in a prior ruling which is repeated below:

The plaintiff, American Express Centurion Bank, moves for summary judgment based on the fact that the defendants, Hector and Yasmira Rodriguez, who are also the debtors in the underlying bankruptcy case, failed to respond to the plaintiff's interrogatories, requests for admission, and document production request.

The facts giving rise to this proceeding are as follows. The defendants admittedly paid taxes to the U.S. government using a credit card issued by the plaintiff. The defendants charged a total of $12,446.39 - $12,144 were charged with the U.S. Treasury and $302.39 were charged with a tax payment convenience company. In its complaint, the plaintiff requests the court to determine that the debt charged by the defendants on the credit card is nondischargeable pursuant to section 523(a)(14).

The debtors oppose the motion. They admit paying the taxes with the plaintiff's credit card, but state that they "had the genuine intention of paying back [the debt]."

Summary judgement is appropriate when there exists "no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The Supreme Court discussed the standards for summary judgment in a trilogy of cases, Celotex Corporation v. Catrett, 477 U.S. 317, 327 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), and Matsushita Electrical Industry Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). In a motion for summary judgment, the moving party bears the initial burden of persuasion in demonstrating that no issues of material fact exist. See Anderson at 255. A genuine issue of material fact exists when the trier of fact could reasonably find for the non-moving party. Id. at 248. The court may consider pleadings, depositions, answers to interrogatories and any affidavits. Celotex at 323. Where the movant bears the burden of persuasion as to the claim, it must point to evidence in the record that satisfies its claim. Id. at 252.

11 U.S.C. § 523(a)(14) provides for the nondischargeability of debts incurred to pay a tax to the United States that would be nondischargeable pursuant to 523(a)(1). The purpose of this provision is to prevent a debtor from substituting a nondischargeable tax debt for a dischargeable debt. Ramey v. Barton (In re Barton), 321 B.R. 877, 878 (Bankr. N.D. Ohio 2005). The provision has two elements, (i) the debt must have been incurred to pay a tax owed to the United States and (ii) the tax owed to the United States would have been otherwise nondischargeable under section 523(a)(1). Id.

The plaintiff argues that both elements have been satisfied because the defendants failed to respond to the interrogatories, requests for admission, and document production requests. Fed. R. Civ. P. 33(b)(2), 34(b)(2), and 36(a)(3), as made applicable here by Fed. R. Bankr. P. 7033, 7034, and 7036, respectively, provide a responding party to interrogatories, request for

admissions, and a document production request, with 30 days to respond. The effect of not responding to a request for admissions is that the "matter is admitted, unless within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." Fed. R. Civ. P. 36(a)(3). As to interrogatories and document production requests, Fed. R. Civ. P. 37(a)(3)(B)(iii) & (iv), as made applicable here by Fed. R. Bankr. P. 7037, permits the party seeking discovery to move to compel responses.

The plaintiff served on the defendants its interrogatories, requests for admission, and document production requests on February 26, 2009. The defendants have not responded.

The court is satisfied by the admission in the defendants' opposition that they "use[d] [their] American Express card to pay [their] Taxes" and by their failure to respond to the requests for admission that the subject debt was incurred to pay a tax owed to the United States. This satisfies the first prong of section 523(a)(14).

However, the court is not satisfied on the evidence of the second prong, that the tax owed to the United States would have been otherwise nondischargeable under section 523(a)(1). The plaintiff cites the defendants' failure to respond to Request for Admission #10, which asks them to admit that "[t]hey incurred the obligation referenced in the Complaint and Discovery to pay tax to the United States that would otherwise be nondischargeable pursuant to 11 U.S.C. § 523(a)(1)."

But, the defendants are not represented by counsel and would be grossly unfair if they not given one more opportunity to present evidence on whether the debt in question would have been otherwise nondischargeable under section 523(a)(1). While the court recognizes that the defendants have failed to respond to the plaintiff's discovery and that this has prejudiced the plaintiff, the defendants' lack of legal representation warrants some leniency in their favor. Hence, the court will provide the defendants with one more opportunity to present evidence on the second prong of section 523(a)(14). The defendants shall submit evidence about the taxes they paid to the United States using the plaintiff's credit card, including the nature of the taxes (personal or corporate and, income, property, or otherwise), the period for which the taxes were assessed (e.g., 2007 year), and when the taxes were originally due. The defendants must submit this evidence by July 6, 2009. The plaintiff's shall be due July 13, 2009. It shall be limited only to what is filed by the defendants. In the event the defendants fail to submit the required evidence by July 6, 2009, the court will grant the motion. The hearing is continued to July 24, 2009 at 9:00 a.m.

The defendants did not submit any additional evidence concerning the nature of the tax liability. Their failure then to respond to Request for Admission #10, which asked them to admit that "[t]hey incurred the obligation referenced in the Complaint and Discovery to pay tax to the United States that would otherwise be nondischargeable pursuant to 11 U.S.C. § 523(a)(1)," qualifies as an admission that the that the tax owed to the United States would have been otherwise nondischargeable under section 523(a)(1). This satisfies the second prong of section 523(a)(14). Hence, the plaintiff has established that the debt is nondischargeable pursuant to section 523(a)(14). Accordingly, the motion was granted and judgment was previously entered.

167. 09-30568-A-7 BRADLEY/MICHELE MOSBURG HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA N.A. 6-26-09 [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, U.S. Bank, seeks relief from the automatic stay as to real property in El Dorado Hills, California. The property has a value of $375,000 and it is encumbered by claims totaling approximately $524,408. The movant's deed is the only deed against the property, securing a claim of approximately $523,871.

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 June 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

168. 09-27571-A-7 DAVID/DIANA SEWELL HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, VS. 6-23-09 [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, GMAC Mortgage, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $233,000 and it is encumbered by claims totaling approximately $366,430. The movant's deed is in first priority position and secures a claim of approximately $268,164.

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 May 23, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

169. 09-30672-A-7 LEE/SANDRA HEARNEY
RTD #1
THE GOLDEN 1 CREDIT UNION, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-26-09 [10]

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

The motion will be granted.

The movant, The Golden One Credit Union, seeks relief from the automatic stay as to real property in Pioneer, California. The property has a value of $208,025 and it is encumbered by claims totaling approximately $266,740. The movant holds both the first and second deeds against the property, but this motion relates only to the second deed, securing a claim of approximately $45,373.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

170. 09-31472-A-7 JUDITH CORDEIRO HEARING - MOTION FOR REDEMPTION
PLG #1 6-26-09 [9]

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 creditor, 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 to redeem a 2006 Pontiac G6 in a fair condition with approximately 60,000 miles. The debtor alleges that the vehicle has a value of $6,975. The vehicle is subject to a secured claim in the amount $21,179.99 held by Wachovia Dealer Services.

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

The debtor has claimed an exemption totaling $18,300 in the vehicle in Amended Schedule C. And the debtor has submitted evidence that the vehicle has an estimated retail value of $6,975.

The motion will be granted. The sum of $6,975 shall be tendered within 15 days of entry of the order.

171. 09-26373-A-7 LUIS/MYRNA ROSALES
PD #2
NATIONAL CITY MORTGAGE, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-26-09 [18]

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

The motion will be granted.

The movant, National City Mortgage, seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of $157,000 and it is encumbered by claims totaling approximately $355,625. 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 $313,116.

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 May 15, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

172. 09-27374-A-7 ELMIR EMBRY
JCK #1

HEARING - DEBTOR'S MOTION FOR ABANDONMENT
6-23-09 [19]

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 debtor moves for an order compelling the trustee to abandon the estate's interest in the assets of an elderly care business.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The business is operated at a real property located in Stockton, California, with a scheduled value of $175,000 and encumbrances totaling approximately $201,893. See Schedule D. The debtor seeks abandonment also of a computer, printer, and a fax machine with a scheduled value totaling $150. The items have been fully exempted.

Given the scheduled value of and encumbrances against the real property, and given the nominal value and exemption in the personal property, the court concludes that both the real and personal property is of inconsequential value to the estate. The motion will be granted.

173. 09-26175-A-7 NANCY ROMWEBER
PD #1
AURORA LOAN SERVICES, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-23-09 [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, Aurora Loan Services, seeks relief from the automatic stay as to real property in Grass Valley, California. The property has a value of $320,000 and it is encumbered by claims totaling approximately $459,078. The movant's deed is in first priority position and secures a claim of approximately $416,733.

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 May 12, 2009.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

174. 09-27075-A-7 PATRICK BRADY AND DEBRA HAGEDON — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
KAT #1 — 6-23-09 [24]
DEUTSCHE BANK NAT'L TRUST CO., VS.

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

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to real property in Sonoma, California. The property has a value of $310,000 and it is encumbered by claims totaling approximately $383,041. 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 June 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

175. 09-26976-A-7 VANESSA NICHOLSON
PD #1
WELLS FARGO BANK, N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-15-09 [12]

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

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $143,000 and it is encumbered by claims totaling approximately $277,439. 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 May 26, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

176.	09-28476-A-7 09-2262 MARSHA MONTGOMERY, VS. DEPARTMENT OF EDUCATION, ET AL.	MARSHA MONTGOMERY BHS #1	HEARING - MOTION PERMITTING EDUCATION CREDIT MANAGEMENT CORPORATION TO SUBSTITUTE IN AS REAL PARTY IN INTEREST ON BEHALF OF DEFENDANT CALIFORNIA STUDENT AID COMMISSION 6-12-09 [10]

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 plaintiff 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 Educational Credit Management Corporation moves to substitute in the place of the California Student Aid Commission as a real party in interest defendant, pursuant Fed. R. Civ. P. 25, as made applicable here via Fed. R. Bankr. P. 7025.

At the July 15, 2009 status conference in this action, the plaintiff, Marsha Montgomery, stated that she agrees with the substitution requested by ECMC.

Fed. R. Civ. P. 25(c) provides that "[i]f an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party."

ECMC has produced evidence that CSAC has transferred to it all of the notes

that are the subject of this adversary proceeding. See Kerry Klisch Declaration ¶¶ 5, 6. Hence, the motion will be granted. ECMC will be substituted as a defendant in the place of CSAC. The motion will be granted.

177. 09-25877-A-7 JASON/MARCI KLIPFEL HEARING - MOTION FOR
JCK #1 ABANDONMENT
6-23-09 [18]

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 debtor moves for an order compelling the trustee to abandon the estate's interest in the assets of a dance studio business, including business merchandise with a scheduled value of $3,600.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The business is operated out of leased premises and the assets of the business consist of business merchandise with a scheduled value of $3,600. The merchandise has been fully exempt.

Given the little value and exemption in the business assets, the court concludes that the assets are of inconsequential value to the estate. The motion will be granted.

178. 09-26680-A-7 GARY/ELIZABETH HOWELL HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
BAC HOME LOANS SERVICING, L.P., VS. 6-11-09 [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, BAC Home Loans, seeks relief from the automatic stay as to real property in Gerber, California. The property has a value of $150,000 and it is

encumbered by claims totaling approximately $351,623. 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 May 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

179. 09-30481-A-7 SHERRY GROCE HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-15-09 [15]

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

The debtor failed to file the statistical summary with the petition or within 15 days of its filing. However, it was filed on June 15 and no prejudice resulted from the late filing.

180. 09-29985-A-7 ANGELA/STEVEN MCDANIEL HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 7-8-09 [13]
MBJ #1
SIERRA CENTRAL CREDIT UNION, VS.

Final Ruling: The movant has continued the hearing to August 3, 2009 at 9:00 a.m.

181. 09-24886-A-7 LEWIS STILES HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-22-09 [14]
PD #1
HSBC BANK USA, N.A., VS.

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

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

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

The movant, HSBC Bank U.S.A., seeks relief from the automatic stay as to real property in Grenada, California.

Given the entry of the debtor's discharge on June 22, 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 $230,000 and it is encumbered by claims totaling approximately $234,782. The movant's deed is in first priority position and secures a claim of approximately $189,282.

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 17, 2009.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

182. 08-25987-A-7 REBECCA LINDSEY HEARING - MOTION FOR
ASW #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 6-11-09 [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 in part and dismissed in part.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Sun Trust Mortgage, Inc., seeks relief from the automatic stay as to real property in Susanville, California.

Given the entry of the debtor's discharge on September 8, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $215,000 and it is encumbered by claims totaling approximately $216,101. The movant's deed is the only encumbrance against the property.

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

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

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

183. 08-28487-A-11 ROOM SOURCE LLC
JMK #1

HEARING - APPLICATION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM
6-25-09 [418]

Final Ruling: This motion for the allowance of an administrative claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor or 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.

Creditor and Lessor Scofield-Moore Trustees moves for the allowance and payment of $15,718.63 as an administrative expense claim, representing the rental value and utilities of debtor's post-petition use of the creditor's premises to store assets pending their sale. The debtor completed removal of its assets from the creditor's premises on May 22, 2009. The debtor has not paid for the use of the premises from April 1, 2009 through May 22, 2009. Via a stipulation between the debtor and the creditor, the time to assume or reject the lease had been extended until March 31, 2009. See Docket No. 348 ¶5A. Hence, the lease was deemed rejected as of April 1, 2009 because the debtor did not assume it by the March 31 deadline.

Section 503(b) provides that after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1) (A) the actual, necessary costs and expenses of preserving the estate.

The storage of the debtor's assets at the creditor's premises preserved them until the debtor was able to sell them and realize proceeds for the benefit of the estate. The court concludes then that the unpaid rental value and utilities for the storage of the debtor's assets at the premises represents actual and necessary costs for preserving assets of the estate. Accordingly, the motion will be granted.

184. 09-21788-A-11 MC2 WINES
ASK #1
BANK OF ALAMEDA, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
7-9-09 [160]

Final Ruling: The motion will be dismissed without prejudice because the notice of hearing violates Local Bankruptcy Rule 9014-1(d)(3). This rule requires the notice of hearing to indicate whether and when written opposition must be filed. The subject notice of hearing does not indicate whether and when written oppositions must be filed.

Further, neither the debtor nor the chapter 11 trustee have been served by the motion. While their attorneys have been served, this is not sufficient notice. Fed. R. Bankr. P. 9013 and 9014(a) provide that a request for an order shall be made by a motion. Fed. R. Bankr. P. 9014(b) further provides that a motion must be served in the manner provided for service of a summons and a complaint. Fed. R. Bankr. P. 7004(b) permits service of a summons and a complaint by first class mail. But, nothing in Fed. R. Bankr. P. 7004 permits service to the debtor's attorney to the exclusion of the debtor or permits service to the trustee's attorney to the exclusion of the trustee. Contra Fed. R. Bankr. P. 7004(g). Accordingly, service is defective.

185. 09-29988-A-7 DEBRA TROLLOPE
JHW #1
CHRYSLER FIN'L SVCS. AMERICAS LLC, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-16-09 [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, Chrysler Financial Services Americas, seeks relief from the automatic stay with respect to a 2006 Dodge Ram 1500. The vehicle has a value of $16,000 and its secured claim is approximately $27,231.

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 June 30, 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.

186. 09-29988-A-7 DEBRA TROLLOPE
PD #1
U.S. BANK N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-26-09 [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, U.S. Bank, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $109,000 and it is encumbered by claims totaling approximately $322,775. 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 June 30, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

187. 09-30489-A-7 MARGARITO/LILBELIA DELGADO HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK N.A., VS. 6-16-09 [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, U.S. Bank, seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of $100,000 and it is encumbered by claims totaling approximately $234,228. 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 July 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

188. 09-28690-A-7 GREGORY/LOIS WELCH HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 6-24-09 [16]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to real property in Chilcoot, California. The property has a value of $450,000 and it is encumbered by claims totaling approximately $499,789. 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 $417,889.

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 June 9, 2009.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

189. 09-27591-A-7 JOSHUA HESS
WGM #1
CENTRAL MORTGAGE CO., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-22-09 [10]

Final Ruling: The motion will be dismissed without prejudice.

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

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

190. 09-26893-A-7 HUGO GUTIERREZ
PD #1
BANK OF AMERICA, N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-19-09 [15]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of $237,000 and it is encumbered by claims totaling approximately $587,283. See Schedule D. 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 $485,420.

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 May 26, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

191. 08-38896-A-7 MANUEL/EVA SHARP
PD #1
WELLS FARGO BANK, N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-11-09 [27]

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

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

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Redding, California.

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 property has a value of $314,000 and it is encumbered by claims totaling approximately $367,250. The movant's deed is in first priority position and secures a claim of approximately $317,250.

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

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

192. 09-28596-A-7 MARILYN GUEVARRA
RCO #1
BANK OF AMERICA, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-18-09 [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 America, seeks relief from the automatic stay as to real property in Vallejo, California. The property has a value of $280,500 and it is encumbered by claims totaling approximately $453,889. 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 June 11, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

193. 09-21797-A-7 CONNECT 2 WIRELESS, INC.
GEM #1
AUTOMOTIVE RENTALS, INC., VS.

HEARING - MOTION FOR APPROVAL OF STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY
6-22-09 [40]

Final Ruling: The motion will be dismissed without prejudice.

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

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

194. 09-26798-A-7 DEMETRIUS JONES
VC #1
SANTANDER CONSUMER USA, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-15-09 [17]

Final Ruling: The motion will be dismissed without prejudice.

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

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

195. 09-30498-A-7 JUANITO DELA CRUZ

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
6-15-09 [14]

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

An order to show cause was issued because the debtor failed to file Exhibit D to the petition together with a certificate for credit counseling as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). Nonetheless, after issuance of the order to show cause, the debtor filed a certificate. No prejudice has resulted from the delay.

196. 09-30698-A-7 TONY/RENEE CAREY
PD #1
WELLS FARGO BANK, NA, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-11-09 [8]

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

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Ripon, California. The property has a value of $325,000 and it is encumbered by claims totaling approximately $432,430. 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 $358,622.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 6, 2009.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

197. 09-25599-A-7 EARL/SHEILA MCGREGOR HEARING - MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 6-23-09 [31]

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

The motion will be granted.

The movant, Wachovia Mortgage, seeks relief from the automatic stay as to real property in Fairfield, California. The property has a value of $350,000 and it is encumbered by claims totaling approximately $643,640. 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 $488,827.

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 May 21, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

198. 09-25599-A-7 EARL/SHEILA MCGREGOR HEARING - MOTION FOR
DMM #2 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 6-23-09 [37]

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

The motion will be granted.

The movant, Wachovia Mortgage, seeks relief from the automatic stay as to real property in Fairfield, California. The property has a value of $350,000 and it is encumbered by claims totaling approximately $643,640. The movant holds both the first and second deeds against the property, but the motion relates only to the second deed, securing a claim of approximately $147,050.

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 May 21, 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. Further,

upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

199. 09-27499-A-7 ABED ASFOUR HEARING - MOTION FOR
WFZ #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, F.S.B., VS. 6-18-09 [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, Indymac Federal Bank, seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of $142,000 and it is encumbered by claims totaling approximately $305,421. The movant's deed is in first priority position and secures a claim of approximately $256,352.

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 May 29, 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

200. 09-28499-A-7 MARY COTTON

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
6-24-09 [38]

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 June 15, 2009 was not paid.

However, the trustee filed opposition to an earlier order to show cause, indicating that he has discovered an undisclosed asset. The debtor inherited a one-half interest in an unencumbered real property shortly before the petition date, having a value sufficient to pay all creditors in full. Hence, the trustee requested that the petition remain pending and that the filing fee be paid out of the debtor's share of the sale proceeds.

The court previously agreed with the trustee and the for the same reasons it discharges this latest order to show cause. Given the discovery of the debtor's interest in an unencumbered real property, this order to show cause will be discharged and the petition will remain pending. The trustee shall pay the filing fee in full out of the first available proceeds from the administration of the estate.

201. 09-29499-A-7 CATHERINE ANNIS
PD #1
HSBC BANK USA, N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-26-09 [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, HSBC Bank U.S.A., seeks relief from the automatic stay as to real property in Roseville, California. The property has a value of $210,000 and it is encumbered by claims totaling approximately $405,138. See Amended Schedule A. The movant's deed is in first priority position and secures a claim of approximately $276,544.

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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.

202. 09-30699-A-7 VICKI DIXON
MDE #1
NATIONSTAR MORTGAGE, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
6-24-09 [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, Nationstar Mortgage, seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of $235,500 and it is encumbered by claims totaling approximately $300,810. 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. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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.