

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 3, 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 31, 2009 AT 9:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 17, 2009, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 24, 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.

August 3, 2009 at 9:00 a.m.

MATTERS FOR ARGUMENT

1. 09-25700-A-7 CAROL COBB CONT. HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, LLC, VS. 5-29-09 [12]

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

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

The debtor opposes the motion, arguing that (1) the movant does not have standing to prosecute the motion as it is not the real party in interest on the loan, but that rather Deutsche Bank Trust Company Americas is the real party in interest and (2) both the movant and DBTCA have violated the automatic stay in a district court litigation by filing a motion to dismiss. The debtor moves the court to determine that the movant has violated the automatic stay. The movant has filed a reply.

However, the debtor's opposition to the motion is moot. Given the entry of the debtor's discharge on July 16, 2009, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

Also, the court will dismiss the debtor's request that it determine that the movant violated the stay. This assertion and the opposition are not supported by admissible evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(f)(1)(ii), which provides that "Opposition shall be accompanied by evidence establishing its factual allegations." In addition, the debtor may not seek relief in connection with her opposition to the motion. If she wishes to seek relief, the debtor should file and serve the appropriate contested matter or adversary proceeding.

As to the estate, the analysis is different. The property has a value of \$460,000 and it is encumbered by claims totaling approximately \$1,076,481. The movant's deed is the only encumbrance against the property.

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

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

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

2. 09-31300-A-7 ALFONSO DE GUIA, II HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
ONEWEST BANK FSB, VS. 7-17-09 [18]

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

The motion will be granted.

The movant, One West Bank, seeks relief from the automatic stay as to a real property in Elk Grove, California. The property has a value of \$275,000 and it is encumbered by claims totaling approximately \$492,200. The movant's deed is in first priority position and secures a claim of approximately \$394,227.

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

3. 09-26805-A-7 CHRISTY IWUCHUKWU HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
FLAGSTAR BANK, FSB, VS. 7-20-09 [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, Flagstar Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$230,000 and it is encumbered by claims totaling approximately \$451,630. The movant's deed is in first priority position and secures a claim of approximately \$325,630.

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

4. 09-32305-A-7 WILLIAM/CARY SHARP
WGM #1
U.S. BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-13-09 [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, U.S. Bank, seeks relief from the automatic stay as to a real property in Lincoln, California. The property has a value of \$200,000 and it is encumbered by claims totaling approximately \$365,025. The movant's deed is in first priority position and secures a claim of approximately \$330,025.

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

5. 09-26607-A-7 TONY/GLYNIS TAORMINA
WGM #1
ING BANK, FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-15-09 [14]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy

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

The motion will be granted.

The movant, ING Bank, seeks relief from the automatic stay as to a real property in Lodi, California. The property has a value of \$175,000 and it is encumbered by claims totaling approximately \$282,827. The movant's deed is in first priority position and secures a claim of approximately \$257,827.

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 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.

6. 09-31807-A-7 JENNIFER KAWATE CONT. HEARING - MOTION FOR
EGS #1 RELIEF FROM AUTOMATIC STAY
GUILD MORTGAGE CO., VS. 7-1-09 [10]

Tentative Ruling: The motion will be granted.

The movant, Guild Mortgage Company, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$180,000 and it is encumbered by claims totaling approximately \$344,015. The movant's deed is in first priority position and secures a claim of

approximately \$334,535.

The court concludes that there is no equity in the property 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 17, 2009.

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

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

7. 09-30908-A-7 MICHELLE WILDE HEARING - MOTION TO
ADS #2 COMPEL TRUSTEE TO ABANDON PROPERTY
7-22-09 [26]

Tentative Ruling: The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in her real property in Folsom, California. The property is over-encumbered.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The debtor has scheduled the value of the property at \$765,500. The property is encumbered by a first deed of trust in favor of Indymac Bank in the amount of \$775,845, a second mortgage in favor of River City Bank in the amount of \$231,400, and property taxes totaling approximately \$12,459, for a total of \$1,019,704. Given the scheduled value of and encumbrances against the property, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

8. 09-25409-A-7 YAN AKHUMOV

HEARING - MOTION (I) TO
ENFORCE THE AUTOMATIC STAY;
(II) FOR AN ORDER TO SHOW
CAUSE; (III) COMPEL THE PERSON
WITH THE MOST KNOWLEDGE AT SMUD
TO APPEAR AND TESTIFY; (IV) FOR
SANCTIONS; AND (V) COMPEL
COMPLIANCE WITH ORDER OF THIS
COURT
6-12-09 [18]

Tentative Ruling: The motion will be denied.

The debtor seeks to enforce the automatic stay against SMUD. SMUD opposes the motion.

The debtor sold his business on March 10, 2009. Prior to selling the business, the debtor had been delinquent on utility charges to SMUD. On March 5 he received a "final termination notice" from SMUD. SMUD terminated utility services at the business on March 20. The new owner contacted the debtor about SMUD's termination of utility services. The debtor filed for bankruptcy on March 26, listing SMUD's in the amount of \$2,371.61. On March 26, the debtor went to SMUD and provided it with a copy of his bankruptcy petition. SMUD refused to restart utility services.

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)."

The motion will be denied also because the debtor sold the business pre-petition, on March 10. On March 26, when the debtor filed for bankruptcy, he did not own the business. As a result, the protections of the automatic stay did not attach to the business. The automatic stay did not require SMUD to restart utility services at the business for the benefit of the nondebtor/new owner. The business is not part of this bankruptcy. The debtor's bankruptcy does not prevent SMUD from collecting its debt from the business. It only protects the debtor and his property. See 11 U.S.C. § 362(a). The motion will be denied.

9. 09-29909-A-7 JAMES DAVISON AND
JHW #1 MENG SHEN
CHRYSLER FINANCIAL SVCS. AMERICAS LLC. VS.

CONT. HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-16-09 [11]

Tentative Ruling: 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.

10. 09-24911-A-7 JOSEPH/SARAH DEFAZIO HEARING - MOTION FOR
RSL #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 7-6-09 [23]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Bank of America, seeks relief from the automatic stay with respect to a 2007 GMC Yukon Denali.

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 20, 2009 and a meeting of creditors was first convened on April 24, 2009. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than April 19. 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 24, 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 24, 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 April 27, 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 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.

11. 09-28518-A-7 LEON/MARION DEAN HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, LLC, VS. 7-8-09 [17]

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

The motion will be granted.

The movant, Aurora Loan Services, seeks relief from the automatic stay as to a real property in Bella Vista, California. The property has a value of \$476,000 and it is encumbered by claims totaling approximately \$690,625. The movant's deed is in first priority position and secures a claim of approximately \$525,862.

The court concludes that there is no equity in the property 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 18, 2009.

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

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

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

12. 09-30419-A-7 DIGRAN/JESSICA DAVTIAN HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA N.A., VS. 7-11-09 [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, Bank of America, seeks relief from the automatic stay as to a real property in Suisun City, California. The property has a value of \$390,000 and it is encumbered by claims totaling approximately \$625,943. The movant's deed is in first priority position and secures a claim of approximately \$560,470.

The court concludes that there is no equity in the property 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. 09-30419-A-7 DIGRAN/JESSICA DAVTIAN HEARING - MOTION FOR
KAT #2 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 7-16-09 [22]

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

The motion will be granted.

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay as to a real property in Lafayette, California. The property has a value of \$750,000 and it is encumbered by claims totaling approximately \$1,027,589. The movant's deed is in first priority position and secures a claim of approximately \$829,589.

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

14. 09-31919-A-7 THEOLA HORTON CONT. HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
7-1-09 [12]

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

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

Moreover, 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 26. The schedules and statements were not filed on or before the 45th day. Thus, on July 27, the 46th day, 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).

15. 09-31324-A-7 NICOLAE MATISOI AND HEARING - MOTION FOR
KAT #1 RODICA JURCUT RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, LLC, VS. 7-13-09 [34]

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

The motion will be granted.

The movant, Aurora Loan Services, seeks relief from the automatic stay as to a real property in Fair Oaks, California. The property has a value of \$277,000 and it is encumbered by claims totaling approximately \$385,211. 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 \$344,211.

The court concludes that there is no equity in the property 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 16, 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.

16. 08-24927-A-11 MAINLAND NURSERY, INC. CONT. HEARING - MOTION FOR
WFH #18 ATTORNEYS' FEES AND COSTS AS
PREVAILING PARTY (\$21,837.00 FEES;
\$7,294.40 EXPENSES)
4-15-09 [583]

Tentative Ruling: The motion will be granted in part.

This motion was continued from May 26. The court issued the following ruling for the May 26 date.

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

The debtor moves the court to approve the payment of its fees and costs in successfully defending a motion for relief from the automatic stay by Farmers & Merchants Bank. Farmers opposes the motion.

The issue at the heart of this motion is whether the Supreme Court in Travelers Cas. and Sur. Co. of America v. Pacific Gas and Elec. Co., 549 U.S. 443 (2007), overruled the Ninth Circuit decision of Johnson v. Righetti (In re Johnson), 756 F.2d 738 (9th Cir. 1985). While no dispute exists that Travelers expressly overruled the rule enunciated in Fobian v. Western Farm Credit Bank (In re Fobian), 951 F.2d 1149 (9th Cir. 1991), Farmers argues that Johnson has not been overruled and is still the controlling law in the Ninth Circuit. This court disagrees.

The facts in Johnson are strikingly similar to the facts in this case. In

Johnson, the Court of Appeals affirmed the district court's reversal of an award of attorney's fees by the bankruptcy court to the debtor for successfully opposing a motion for relief from the automatic stay by a creditor. As the debtor in this case argues, the debtor in Johnson argued that a California fee shifting statute, Cal. Civ. Code § 1717, allowed the debtor to recover attorney's fees for successfully defending the creditor's motion for relief from stay. Johnson, 756 F.2d at 739. The Court of Appeals reasoned that the bankruptcy court improperly awarded the fees because it applied the California fee shifting statute in a proceeding governed entirely by federal substantive law, namely the relief from stay provisions of 11 U.S.C. § 362(d). "The validity of the . . . contract underlying the claim is not litigated" in a relief from stay action. "Thus, the state law governing contractual relationships is not considered in stay litigation." Johnson, 756 F.2d at 740.

Nearly six and one-half years after Johnson, the Ninth Circuit published its decision in Fobian, holding that "where the litigated issues involve not basic contract enforcement questions, but issues peculiar to federal bankruptcy law, attorney's fees will not be awarded absent bad faith or harassment by the losing party." Fobian, 951 F.2d at 1153. To support its holding, Fobian cited three of its prior decisions, including Johnson. Id.

Approximately 14.5 years after Fobian, the Supreme Court in Travelers expressly overturned the Fobian, holding that an award of attorney's fees pursuant to state law may not be barred on the basis that the fees were incurred solely in the litigation of federal bankruptcy law issues. The court concluded that the Fobian rule was not based on the Bankruptcy Code. And, it noted that none of the three cases cited by Fobian, including Johnson, identified any basis for disallowing a claim for attorney's fees incurred while enforcing a contract in the context of a federal bankruptcy case. Travelers, 549 U.S. at 451-53.

The court disagrees with Farmers that Travelers distinguished Johnson from Fobian in stating that the claim for attorney's fees in Johnson failed as a matter of state law. Travelers, 549 U.S. at 452. The Supreme Court in Travelers did not make this statement to distinguish Johnson from Fobian. It made the statement to emphasize that the decisions cited by Fobian did not examine the merits of the state law claims for attorney's fees. The claims failed as a matter of law as state law did not even apply. This is no different than the conclusion reached by Fobian that "'the question of the applicability of the bankruptcy laws to particular contracts is not a question of the enforceability of a contract but rather involves a unique, separate area of federal law.'" See Fobian, 951 F.2d at 1153 (citing Collingwood Grain, Inc. v. Coast Trading Co., Inc. (In re Coast Trading Co., Inc.), 744 F.2d 686, 693 (9th Cir. 1984)).

The fact that the attorney's fees in Travelers may have been incurred in litigating state law in addition to federal bankruptcy law issues is irrelevant as the Supreme Court has abolished this distinction. See Travelers, 549 U.S. at 451, 454. In light of the foregoing, this court concludes that Travelers has overturned Johnson's holding that attorney's fees allowable under state law may not be awarded in a proceeding governed entirely by federal substantive law, such as a relief from stay action. Stated differently, a relief from stay action is an action "on the contract" for purposes of recovering attorney's fees and costs allowable by an agreement between the parties and/or a state statute, even though the relief from stay action solely involves federal law issues.

Cal. Civ. Code § 1717 provides that:

(a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

In other words, the statute allows recovery of attorney's fees and costs by a party not entitled to such fees and costs under a contract, provided that party is the prevailing party in an action on the contract and the contract allows for the recovery of attorney's fees and costs by the losing party.

On September 23, 2008, this court denied Farmers' motion for relief from the automatic stay. In its ruling on the motion, the court determined that the estate property as to which relief from stay was sought had approximately \$440,656.67 in equity. See Docket No. 281.

The loan agreement between the parties provides that "[i]n the event of any action or proceeding to enforce or interpret [Farmers'] rights or [the debtor's] obligations under this Agreement or the Loan Documents, [Farmers] shall be entitled to reimbursement from [the debtor] of all costs and expenses associated with said action or proceeding, including reasonable attorney's fees, whether or not a lawsuit is filed or such fees, expenses and costs are incurred in any bankruptcy or other proceeding or on appeal or for any post-judgment collection actions or services. [The debtor] shall reimburse [Farmers] for all reasonable attorney's fees and expenses incurred in the representation of [Farmers] in any aspect of any bankruptcy or insolvency proceeding initiated by or on behalf of [the debtor] that concerns any of their respective obligations to [Farmers] under this Agreement or the Loan Documents or otherwise." See Exhibit B to Motion at 12, Docket No. 587; see also Exhibit B to Declaration of Donna Baxter in Support of Farmers' Motion for Relief from Stay at 12, Docket No. 199.

Hence, while the debtor prevailed on Farmers' motion for relief from stay, the loan agreement between the parties allows only Farmers to recovery attorney's fees and costs. The provision is broad, allowing for recovery of attorney's fees and costs in any proceeding, including any aspect of any bankruptcy proceeding. Accordingly, the court concludes that the debtor is entitled to recover its attorney's fees and costs in defending Farmers' motion for relief from stay.

Next, Farmers contends that the appraisers utilized by the debtor in its opposition to the motion for relief from stay are not entitled to compensation as they have not been employed by the estate. The debtor is seeking reimbursement for expenses paid to the appraisers in the total amount of \$6,500. However, Farmers has cited any authority requiring court approval for the employment of a professional by the bankruptcy estate when the professional is not receiving compensation from estate assets. This court does not have to approve the payment of compensation from non-estate assets as this court's jurisdiction is limited to matters concerning the administration of the bankruptcy estate. See 28 U.S.C. § 157(b)(2); see also Stoe v. Flaherty, 436 F.3d 209, 216 (3rd Cir. 2006). Because the debtor is not seeking payment from estate assets, but is requesting that Farmers to pay the fees of its

appraisers, prior court approval of their employment was not necessary.

On the other hand, even if prior court approval of the appraisers' employment was necessary, Farmers has presented this court with no reason why their employment would not be approved if requested at this time.

Of course, the fees paid to the appraisers must be reasonable and necessary. The \$6,500 in fees paid to the appraisers was not excessive for the work they performed. They reviewed the appraisals submitted by Farmers, conducted market research, inspected the properties, interviewed real estate brokers, the debtor's principal and City of Lodi Planning Staff, and prepared review appraisal reports. Also, the declarations submitted by the appraisers, in support of the debtor's opposition to Farmers' motion for relief, were helpful to the court in identifying flaws and inconsistencies in the Farmers' appraisals. In particular, the appraisers' declarations were helpful in establishing the weight accorded to the liquidation values proffered by Farmers. See Final Ruling Denying Motion For Relief From Stay, DCN KMT-1, Docket No. 281. The court concludes that the appraisers' fees are reasonable and necessary. The court also notes that Farmers has not challenged neither the reasonableness or necessity of the fees.

Farmers maintains that the attorneys' fees requested by the debtor are for excessive, duplicative, and unreasonable services. Farmers complains that many of the time entries include lump/block billing. It has outlined lumped and/or excessive time entries into three categories: Research and Preparation of Pleadings, "Finalizing" the Opposition to Farmers & Merchants Motion, and Preparing for and Attending the Hearing on Farmers & Merchants Motion. May 12, 2009 Declaration of Robert Brumfield, III ¶ 7. The court has reviewed all of the time entries identified in Mr. Brumfield's declaration and its ruling on each time entry follows.

Research and Preparation of Pleadings Entries:

- no 1.6-hour 8/18/08 entry by KCK exists;
- the 0.6-hour 9/2/08 entry by Mr. Khasigian does not state anything about "basic research concerning motions for relief from stay;" also, while this entry indicates a meeting involving Mr. Khasigian, Mr. Egan, and Ms. Lewis, only Mr. Khasigian's time entry is reflected; this entry will be allowed;
- the 4.8-hour 9/3/08 entry by Mr. Egan lumps both research time and time for preparing the opposition to the stay relief motion; when an entry lumps multiple tasks without assigning time to each one separately, the court cannot determine the reasonableness of the fees incurred for each task; this entry will be disallowed unless the debtor delineates the time for each task;
- the 6.2-hour 9/3/08 entry by Ms. Lewis lumps many tasks, without assigning time to each task; it also includes time for preparation and review of an "opposition to lease;" this entry will be disallowed unless the debtor delineates the time for each task and deletes tasks not related to the opposition to the stay relief motion;
- the 2.1-hour 9/3/08 entry by Mr. Khasigian is for research on whether collateral not owned by the estate may be used in calculating equity under section 362(d)(2); the time spent on this task is excessive; the court will

permit only 0.8 hours for this entry;

- the 7.3-hour 9/4/08 entry by Ms. Lewis lumps many tasks without assigning time to each; this entry will be disallowed unless the debtor delineates the time for each task;
- the 1.5-hour 9/4/08 entry by Mr. Khasigian is for research on the utility of going concern and liquidation values; the time spent on this task is excessive; the court will permit only 0.5 hours for this entry;
- the 1.3-hour 9/4/08 entry by Mr. Khasigian is for a conference with Ms. Lewis on section 362(d)(1) research and on whether collateral not owned by the estate may be used in calculating equity under section 362(d)(2); the time spent on this task is excessive; the court will permit only 0.3 hours for this entry;
- the 6.5-hour 9/5/08 entry by Ms. Lewis lumps three tasks without assigning time to each; this entry will be disallowed unless the debtor delineates the time for each task;
- the 1.2-hour 9/5/08 entry by Mr. Khasigian lumps at least two tasks without assigning time to each; this entry will be disallowed unless the debtor delineates the time for each task;
- the 7.7-hour 9/6/08 entry by Ms. Lewis lumps at least eleven tasks without assigning time to each; this entry will be disallowed unless the debtor delineates the time for each task;
- the 1.4-hour 9/21/08 entry by Mr. Khasigian lumps at least two tasks without assigning time to each; this entry will be disallowed unless the debtor delineates the time for each task; also, the time spent on review of research and further research in this entry appears excessive; but, the court will not rule on the reasonableness of this and other entries involving excessive time spent on tasks until the debtor delineates the time for each task;

"Finalizing" the Opposition to Farmers & Merchants Motion:

- the 3.0-hour 9/8/08 entry by Mr. Egan lumps several tasks; this entry will be disallowed unless the debtor delineates the time for each task; also, the debtor shall clarify what "finalize" means;
- the 4.8-hour 9/8/08 entry by Ms. Lewis lumps four tasks; this entry will be disallowed unless the debtor delineates the time for each task; also, the debtor shall clarify what "finalize" means;
- the 0.9-hour 9/8/08 entry by Mr. Khasigian lumps at least two tasks; this entry will be disallowed unless the debtor delineates the time for each task;

Preparing for and Attending the Hearing on Farmers & Merchants Motion:

- the 4.7-hour 9/23/08 entry by Ms. Lewis lumps many tasks, some of which appear unrelated to Farmers' stay relief motion; this entry will be disallowed unless the debtor delineates the time for each task and deletes tasks unrelated to the stay relief motion;
- the 2.1-hour 9/23/08 entry by Mr. Khasigian lumps several tasks; this entry

will be disallowed unless the debtor delineates the time for each task and deletes tasks unrelated to the stay relief motion.

The court cannot determine the reasonableness of the fees incurred for each task in any of the above lumped entries until the debtor delineates the time spent on each task. The motion will be continued to a date to be set at the May 26 hearing on this motion to allow the debtor to amend the above-outlined time entries in accordance with this ruling. Outside of this, the record on this motion is closed.

At the May 26 hearing, the court continued the motion to July 6 to allow the debtor time to supply additional evidence on the time entries identified in the court's prior ruling above. The debtor has filed two additional declarations of Mr. Egan and Ms. Lewis. Farmers has filed a corresponding objection on the grounds of lack of personal knowledge, inadmissible hearsay, and lack of writing used to refresh memory.

The court has reviewed each of the time entries, the debtor's supplemental evidence for each time entry, and Farmers' corresponding objection to each time entry. The court will address each time entry individually below:

- the 4.8-hour 9/3/08 entry by Mr. Egan lumps both research time and time for preparing the opposition to the stay relief motion; Mr. Egan's "estimate" of 1.5 hours of research and 3.3 hours of drafting the opposition is speculation as he does not know the actual time spent on each task; on the other hand, the estimate does not mean that Mr. Egan did not spend the total amount of time reported; the court will disallow one third of this time entry because of the lumped tasks and Mr. Egan's lack of personal knowledge as to the actual time spent on each task;
- the 6.2-hour 9/3/08 entry by Ms. Lewis lumps many tasks, without assigning time to each task; but, Ms. Lewis has reviewed documents necessary to refresh her memory and has delineated the time spent on each task; although Farmers objects on the basis that Ms. Lewis has not stated that she has personal knowledge, with one exception, the court is satisfied that Ms. Lewis has personal knowledge for this time entry as she has described the steps she took to refresh her memory; the exception is Ms. Lewis' "estimate" of spending 2.6 hours drafting the opposition to the relief from stay motion; the time for this task will be reduced by one-third because Ms. Lewis admits to not having personal knowledge about the actual time spent on this task; further, while Farmers complains that the court should require Ms. Lewis to produce documents she used to refresh her memory pursuant to Fed. R. Evid. 612, the court does not have evidence that Farmers requested to examine such documents from the debtor and was denied that request; also, the court will overrule Farmers' hearsay objection to the reliance on legal research invoices to refresh memory as such invoices are records of regularly conducted activity; outside the reduced 2.6-hour task and absent the task(s) not related to the opposition to the stay relief motion, this entry will be allowed in its entirety;
- the 7.3-hour 9/4/08 entry by Ms. Lewis lumps many tasks without assigning time to each; Ms. Lewis has reviewed legal research records and states that she spent 1.1 hours on research; this task will be allowed in its entirety as the court is satisfied that Ms. Lewis has personal knowledge of the time spent on it; the court will overrule Farmers' hearsay objection to the reliance on legal research records to refresh memory as they are records of regularly conducted activity; however, the time spent on the entry's remaining tasks will be reduced by one-third because Ms. Lewis does not know the actual time spent on

each task;

- the 6.5-hour 9/5/08 entry by Ms. Lewis lumps three tasks without assigning time to each; the 1-hour of analyzing legal research will be disallowed as excessive; the court has calculated that the debtor had accumulated already between approximately 10 and 12 hours of legal research by 9/5/08; the time spent on the entry's remaining tasks will be reduced by one-third because Ms. Lewis does not know the actual time spent on each task;

- the 1.2-hour 9/5/08 entry by Mr. Khasigian lumps at least two tasks without assigning time to each; this time entry will be disallowed in its entirety as the court does not have any evidence about it;

- the 7.7-hour 9/6/08 entry by Ms. Lewis lumps at least eleven tasks without assigning time to each; the 1.4 hours of research will be disallowed in its entirety as excessive; the time spent on the entry's remaining tasks will be reduced by one-third because Ms. Lewis does not know the actual time spent on each task;

- the 1.4-hour 9/21/08 entry by Mr. Khasigian lumps at least two tasks without assigning time to each; the debtor has withdrawn its compensation request for this entry;

- the 3.0-hour 9/8/08 entry by Mr. Egan lumps several tasks; the 2.2-hour task of preparing the motion to value collateral will be disallowed as it is not directly related to the debtor's response to the relief from stay motion; the time spent on the entry's remaining tasks will be reduced by one-third because Mr. Egan does not know the actual time spent on each task;

- the 4.8-hour 9/8/08 entry by Ms. Lewis lumps four tasks; the time spent on the entry's tasks will be reduced by one-third because Ms. Lewis does not know the actual time spent on each task;

- the 0.9-hour 9/8/08 entry by Mr. Khasigian lumps at least two tasks; this time entry will be disallowed in its entirety as the court does not have any evidence about it;

- the 4.7-hour 9/23/08 entry by Ms. Lewis lumps many tasks, some of which appear unrelated to Farmers' stay relief motion; Ms. Lewis estimates that she spent 2 hours on two relief from stay motion tasks; the time spent on the tasks will be reduced by one-third because Ms. Lewis does not know the actual time spent on each task;

- the 2.1-hour 9/23/08 entry by Mr. Khasigian lumps several tasks; the debtor has withdrawn its compensation request for this entry.

The motion will be granted as provided above. The debtor shall prepare a proposed form of order and lodge it with the court.

17. 09-21330-A-7 DALE/KATHRYN SHOEMAKER HEARING - TRUSTEE'S MOTION TO
JRR #2 ALLOW PAYMENT OF AUCTIONEER'S
COMMISSION AND EXPENSES TO WEST
AUCTIONS LLC
6-1-09 [24]

Tentative Ruling: The motion will be granted in part.

The trustee moves to compensate West Auctions, auctioneer for the estate. The requested compensation consists of \$1,439 in commission fees and \$585.75 in transportation expenses. The court approved West's employment as the estate's auctioneer on March 23, 2009. Pursuant to the employment order, West's fee is a 20% commission "of gross proceeds of sale, including expenses."

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." West sold a tractor vehicle for the estate on May 7, 2009 for \$7,195.

The court concludes that the requested fees are for actual and necessary services rendered in the administration of this estate. The fees will be approved. However, the requested expenses will not be approved because the terms of employment, as stated in the March 23 employment order, are a 20% commission "of gross proceeds of sale, including expenses," meaning that the 20% commission would include any expenses advanced by West. Hence, the \$585.75 transportation expense will not be approved.

18. 09-29730-A-7 IRINA ZAITSEV HEARING - MOTION TO
SUBSTITUTE DEBTOR IN PRO
PER AS HER OWN ATTORNEY
6-24-09 [14]

Tentative Ruling: The motion will be granted.

The debtor has requested that she substitutes herself in pro per in the place of her counsel, permitting her to represent herself so she can pursue a loan modification with a lender. The debtor is due to receive her discharge on August 24, 2009. All petition documents have been filed, the creditors' meeting has already passed, the debtor has completed the course on personal financial management, and no orders to show cause are outstanding. Given this, the court will permit the debtor to substitute herself in pro per in the place of her counsel. The motion will be granted.

19. 09-25332-A-7 ROBERT/JULIA BILBERRY HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, VS. 7-14-09 [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 in part and dismissed in part.

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay as to a real property in Plymouth, California.

Given the entry of the debtor's discharge on July 13, 2009, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The movant has produced evidence that the property has a value of \$145,000 and it is encumbered by claims totaling approximately \$200,210. See Exhibit 2 to Motion. 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 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.

20. 09-29241-A-7 ANTHONY/JENNIFER ABREU HEARING - OBJECTION TO
DISCHARGE OF DEBTOR BY MIKE KAY
6-25-09 [14]

Tentative Ruling: The objection will be overruled.

Creditor Mike Kay objects to the debtors' discharge and the dischargeability of the debt owed to him. However, the objection will be overruled because it is not supported by any evidence, such 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)."

But more importantly, objections to discharge and complaints to determine the dischargeability of debts require an adversary proceeding. See Fed. R. Bankr. P. 7001(4), (6). In other words, the creditor is not allowed to seek this relief through the use of a motion.

21. 09-29341-A-7 PATRICK/THELMA JOUGANATOS HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK N.A., VS. 7-13-09 [14]

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

The motion will be granted.

The movant, U.S. Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$232,000 and it is encumbered by claims totaling approximately \$398,633. The movant's deed is in first priority position and secures a claim of approximately \$355,633.

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

22. 09-29341-A-7 PATRICK/THELMA JOUGANATOS HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, VS. 7-14-09 [20]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy

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

The motion will be granted.

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay as to areal property in Sacramento, California. The property has a value of \$480,942 and it is encumbered by claims totaling approximately \$644,439. The movant's deed is in first priority position and secures a claim of approximately \$525,497.

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.

23. 09-22043-A-7 MARK FILKILL HEARING - MOTION TO
CLH #1 AVOID LIEN
VS. GAIL MCNAMARA 7-6-09 [20]

Tentative Ruling: The motion will be granted.

The debtor moves to avoid a judicial lien held by Gail McNamara on the debtor's Blackjack Way real property in Sacramento, California. A judgment was entered against the debtor in favor of Gale McNamara for the sum of \$115,571.23 on January 13, 2009. The abstract of judgment was recorded with Sacramento County on January 14, 2009. That lien attached to the debtor's residential real

property located on Blackjack Way in Sacramento, California. The debtor has claimed an exemption of \$1 in the property.

Mr. McNamara opposes the motion, arguing that: (1) although the debtor's residence in the petition is identified as 7771 Watson Way in Citrus Heights, California, "in his declaration pertaining to Blackjack Way Debtor states under penalty of perjury that he lives at Blackjack, and that he is claiming a homestead exemption for Blackjack;" (2) the debtor's exemptions pursuant Cal. Civ. Proc. Code § 703.140(b)(1)&(5) in Schedule C total \$21,839, exceeding the statutory maximum of \$21,825 for such exemptions by \$14.

The debtor has filed a reply.

Initially, none of the debtor's pleadings state that he is living at the Blackjack Way property. And, the court's calculations of the debtor's exemptions pursuant to Cal. Civ. Proc. Code § 703.140(b)(1)&(5) totals \$21,825 and not \$21,839, as claimed by Mr. McNamara. The maximum in total exemptions allowed by Cal. Civ. Proc. Code § 703.140(b)(1)&(5) is \$21,825. In other words, the opposition is misleading and is not accurate in its presentation of the facts.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the Blackjack Way real property has an approximate value of \$130,000 as of the date of the petition. The unavoidable liens total \$173,990.21 on that same date. The property is subject to a first and second deeds securing claims held both by Washington Mutual / JP Morgan in the amounts of \$59,012.67 and \$114,977.54, respectively. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1)&(5) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

24.	06-20046-A-11	LARGE SCALE BIOLOGY	HEARING - PLAINTIFF'S
	09-2321	CORPORATION	MOTION TO REMAND
	DJB #4		6-26-09 [22]

Tentative Ruling: The motion will be granted.

The plaintiff in this removed action, Novichi Biotech, moves for remand back to state court. The action was removed by Defendant BiPar Sciences on June 3, 2009 from the Solano County Superior Court. The other named defendant in the action is JP Morgan Chase Bank.

Defendants BiPar and JP Morgan Chase Bank oppose the motion. They argue that (1) the debtor is entitled to 25% of Novici's gross profit from the warrants, (2) the two agreements for the sale of estate assets, one with Novici and one with BiPar, were approved by this court, (3) pursuant to the terms of the agreement for the sale of estate assets to Novici, Novici has submitted itself to the exclusive jurisdiction of this court, (4) although the action involves state law issues, those issues do not predominate, (5) equitable factors favor the resolution of the action by this court, rather than the state court.

Novici has filed a reply to the opposition.

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

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

28 U.S.C. § 1334(c)(2) provides that this court "shall" abstain from hearing a proceeding based on state law claims, but not arising under or arising in a case under title 11, if "an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction." Williams v. Shell Oil Co., 169 B.R. 684, 688, 690-91 (S.D. Cal. 1994). This is mandatory abstention.

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

However, abstention does not apply in the absence of a pending state proceeding. See Schulman v. California (In re Lazar), 237 F.3d 967, 981-82 (9th Cir. 2001) (holding that 28 U.S.C. §§ 1334(c)(1) and 1334(c)(2) do not apply when "there is no pending state proceeding."). In this case, Defendant BiPar has removed the entire state court action, including all claims brought by the plaintiff, resulting in the absence of a pending state proceeding. Thus, abstention does not apply here.

Turning to mandatory remand, its applicability depends on whether this court has jurisdiction over the removed claims under 28 U.S.C. § 1334. See 28 U.S.C. § 1452(a).

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). Given the subject motion, though, consent of the parties is highly unlikely in this case.

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

A proceeding "arising under title 11" is one that "'invokes a substantive right provided by title 11.'" Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1081 (9th Cir. 2000) (quoting Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987)). A proceeding "arising in a case under title 11" is one that "'by its nature, could arise *only* in the context of bankruptcy case.'" Id.

Finally, a proceeding is "related to a case under title 11" if its outcome could conceivably affect the administration of the estate. Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.), 167 B.R. 591, 595 (Bankr. N.D. Cal. 1994) (citing Fietz v. Great Western Savings (In Fietz), 852 F.2d 455, 457 (9th Cir. 1988)).

In this case, the removed proceeding consists of a single state law claim seeking declaratory relief, resolving the extent of Novici's warrant rights for the purchase of BiPar shares. Novici purchased the warrant rights from the debtor, which had obtained them from BiPar in an agreement where the debtor had licensed some intellectual property to BiPar. Hence, Novici's claim invokes substantive rights provided by state law, namely contract principles. The claim then is not under title 11 and does not arise under title 11 as it does not invoke substantive rights provided by title 11.

And, the claim does not arise in a case under title 11 because, by its nature, it could easily arise outside the instant bankruptcy case. The state law nature of the claim permits its prosecution in state court. Accordingly, Novici's claim against BiPar and JP Morgan is non-core.

As to whether the claim is one that relates to a case under title 11, Novici has not consented for this court to enter final orders or judgments in the litigation. The defendants argue that Novici submitted itself to this court's exclusive jurisdiction pursuant to the terms of the agreement for the sale of estate assets to Novici. But, neither of the defendants were parties to the

agreement in question. Hence, even if the agreement governed this court's resolution of this motion, the agreement is not binding as to the defendants. Stated differently, neither of the defendants may enforce the terms of the agreement executed by Novici. It may be binding only with respect to the other party to the agreement, the debtor.

Yet, the defendants argue that Novici is bound by the terms of the BiPar purchase agreement, which limits the tribunals for resolving disputes over the agreement to this court, because Novici is an assignee of the debtor's warrant rights. Regardless of whether this is true, though, the fact remains that the debtor is not a party to the action and that Novici and BiPar are only marginally involved in the bankruptcy case. Their dispute can be easily resolved in state court, without affecting the administration of the debtor's bankruptcy estate. The debtor's plan has been confirmed and the terms of post-confirmation administration have been established. Whether or not the estate will be entitled to receive some proceeds from the disposition of the instant action will not alter any of the terms of plan administration.

Also, no agreement can bargain away this court's authority to exercise its discretion pursuant to the principles of equitable remand and equitable abstention. The facts in this case warrant remand on equitable grounds. The court has no evidence that the claim cannot be timely adjudicated in the state court where it was commenced. The legal principles for interpretation and enforceability of contracts arise in state law and are routinely applied by state courts. The defendants have not shown that issues other than ones arising in state law are present here.

Given Novici's nonconsent for this court to enter final orders or judgments, whether valid or not, judicial economy and comity dictate that the action be adjudicated in a forum outside of this bankruptcy court. This would avoid at the least the potential for piecemeal litigation. The state court is much better equipped at hearing this case as it involves issues of state law, namely the interpretation of stock warrant rights agreements. This court's law and motion calendar schedule would not allow it to conduct the possibly one-week long trial of the case.

Also, Novici has already filed a formal request for a jury trial. But, in order for this court to conduct a jury trial, all parties must consent. The court does not have the consent of all the parties. And, even if it did, this court is not well equipped to conduct the likely multi-week jury trial, including voir dire, given this court's docket and law and motion schedule. Further, remand would have little or no effect on the administration of the debtor's estate because the debtor is not a party to the pending action, the debtor's plan has been confirmed, and any recovery the debtor would reap from the subject litigation will be governed by the terms of an agreement between Novici and the debtor, to which neither of the defendants are parties. These findings do not in any way interpret or determine any rights of any party under any agreement. The debtor would not be prejudiced by a remand of the claim back to state court. The court concludes then that the equities warrant remand back to state court. The motion will be granted. Novici shall lodge a conforming order.

25. 08-36148-A-11 COPPERFORD, LLC
08-2622
JAMES/SUSAN COLAFRANCESCO, VS.
COPPERFORD, LLC

CONT. HEARING - MOTION FOR
REMAND
4-8-09 [23]

Tentative Ruling: The motion for remand will be granted.

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

The procedural posture of this adversary proceeding is as follows. The plaintiffs filed a complaint against the debtor, Don and Karyn Litchfield, Mr. Russi, and Busaba Voraritskul. Answers have been filed by all named defendants. The debtor has also filed counter-claims against the plaintiffs. The plaintiffs have answered the counter-claims. Additionally, Mr. Russi has filed cross-claims against the debtor and the Litchfields. The debtor and the Litchfields have answered the cross-claims.

The court has reviewed the briefs submitted by the parties. Pursuant to the motion made by Mr. Russi on April 15, 2009, at the last status conference hearing in this case, the court determines that remand is appropriate.

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

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

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

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

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

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

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

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

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

Second, because the claims are only related to a case under title 11, this court may not enter final orders or judgments 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). But the court does not have the consent of the parties in this case.

Third, the court disagrees that remand would double the plaintiffs' litigation costs and would not favor judicial economy and comity as it would result in

both the state court and this court adjudicating the same issues. The plaintiffs are not clear about why remand would double their litigation costs and are not specific about which issues would have to be adjudicated by both courts. Bankruptcy courts routinely allow for the resolution of such state law claims outside the bankruptcy context, whether brought by the debtor or against the debtor. Remand to state court would simply liquidate the pre-petition claims of the plaintiffs and Mr. Russi against the estate. Assuming a judgment is entered against the debtor, the plaintiffs and/or Mr. Russi would have to return to this court and amend their proof of claim against the estate, reflecting the amount of that judgment. This court would not permit the plaintiffs or Mr. Russi to enforce such a judgment entered against the debtor. This court then would not have to adjudicate the same issues the state court would have to adjudicate upon remand.

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

Fourth, in order for this court to conduct a jury trial, all parties must consent. 28 U.S.C. § 157(e). But, while Mr. Russi demands a jury trial, he does not consent to this court conducting the jury trial.

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

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

26. 09-32849-A-7 DARRELL/ALMA BURRELL HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER SERVICES, INC., VS. 7-10-09 [10]

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

The motion will be granted.

The movant, Wachovia Dealer Services, Inc., seeks relief from the automatic stay with respect to a 2002 GMC Yukon. The vehicle has a value of \$7,000 and its secured claim is approximately \$12,409.

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

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

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

27. 09-26051-A-7 BARRY/VICKI MILLER
HSM #1

HEARING - TRUSTEE'S APPLICATION
FOR AUTHORIZATION TO EMPLOY AND
COMPENSATE HEFNER, STARK & MAROIS,
LLP, AS COUNSEL FOR THE CHAPTER 7
TRUSTEE (\$4,000.00)
7-14-09 [24]

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

The application will be approved.

The trustee seeks approval to employ and compensate Hefner, Stark & Marois as counsel for the estate. HSM will prepare and prosecute the estate's employment and compensation applications for West Auctions and HSM, and the motion for sale of the estate's assets by West. HSM will attend the hearings on the employment and compensation applications and the motion for sale. The proposed compensation is a flat fee of \$4,000, which includes expenses.

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

allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. HSM is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

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 court concludes that HSM's compensation for preparing and prosecuting the employment and compensation applications and the motion for sale are for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

28. 09-26051-A-7 BARRY/VICKI MILLER
HSM #2

HEARING - TRUSTEE'S MOTION FOR
ORDER AUTHORIZING SALE OF ESTATE
ASSETS BY AUCTION
7-14-09 [30]

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

The motion will be granted.

The trustee moves the court to approve the sale of assets from the debtors' closet organizer business, Closet Classics. The assets include items such as inventory, equipment, and tools. For more detailed description of the assets the estate is proposing to sell, interested parties should review the motion. West Auctions will sell the assets via an Internet auction from August 11 to August 13, 2009 and, if necessary, via an auction in person. The trustee estimates that the sale will generate gross proceeds of approximately \$10,000. West's compensation is 10% of gross sale proceeds. This means that the estate is estimated to generate approximately \$9,000 from the sale. The sale will be as is, where is, without any representations or warranties.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to section 363(b), as it is in the best interests of the creditors and the estate. The court will approve the sale via one or more Internet and/or in person auctions, as deemed necessary by the trustee.

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

The application will be approved.

The trustee moves to employ and compensate West Auctions as auctioneer for the estate. West will assist the estate with the liquidation of assets from the debtors' closet organizer business, Closet Classics. The assets include items such as inventory, equipment, and tools. West will sell the assets through an Internet auction and, if necessary, in person. The proposed compensation for West is 10% of gross sale proceeds, regardless of amount. In addition, West reserves the right to charge a 13% buyer's premium, with a 3% discount for cash purchases. The estate and West estimate that the property will generate gross sale proceeds of approximately \$10,000.

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

The court concludes that the terms of employment and compensation are reasonable. West is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

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 court concludes that West's compensation for selling the property would be for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

Tentative Ruling: The motion will be denied.

The debtor seeks to redeem a 2007 Ford Expedition, arguing that the vehicle's replacement value is \$24,582. Creditor Golden One Credit Union opposes the motion, arguing that the vehicle's replacement value is approximately \$35,205.

The debtor has filed a reply, arguing that while replacement value is defined as "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined," the KBB value proffered by Golden One is for "a hypothetical vehicle that has been professionally refurbished for retail sale," which is not the case with the subject vehicle. Also, vehicles sold by retailers "are professionally prepared for sale," "are clean," "have passed quality assurance tests," and are "offered with warranties, money-back guarantees and extended service plans."

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)."

The attachments to the motion have not been authenticated by a declaration of the persons who prepared them. See Fed. R. Evid. 901(a). At best then they are inadmissible hearsay. See Fed. R. Evid. 802.

Further, the submitted Edmunds report is incomplete. Only page 3 of 4 has been submitted. Also, the vehicle condition reports were signed by a loan originator in Cincinnati, Ohio, who highly likely did not inspect the vehicle in making the reports. All references to private party values are irrelevant as the vehicle must be valued at its replacement value as of the petition date, which is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. §506(a)(2). Neither the debtor, nor loan originators are qualified to express their opinion of the vehicle's retail value.

Additionally, the debtor's view of retail value entirely undermines the definition of replacement value under section 506(a)(2). The debtor's definition of value is tantamount to private party value. While the condition of the vehicle is taken into consideration, when determining the price a retail merchant would charge, the cost of needed repairs for the vehicle must be accounted for from the perspective of the retailer selling the vehicle, not the debtor. In other words, the cost of needed repairs by a retailer would be less than the cost the debtor would have to pay for the same repairs. The court needs to know the retail value of the alleged repairs or deficiencies in the vehicle. However, the court does not have evidence from the debtor of the vehicle's retail value and does not have evidence of the retail value of

repairs that are to be subtracted. The only admissible evidence of retail value is from Golden One. It has shown that the vehicle's retail value is \$35,205.

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

31. 09-27261-A-7 DAMIEN/JODI PIETAK HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A., VS. 7-7-09 [13]

Tentative Ruling: The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Roseville, California. The property has a value of \$369,000 and it is encumbered by claims totaling approximately \$489,585. 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.

32. 08-33065-A-7 CHRIS/TRACY ANDREWS HEARING - MOTION to
09-2122 USA #1 DISMISS
CHRIST/TRACY ANDREWS, VS. 6-30-09 [10]
U.S. DEPARTMENT OF EDUCATION

Tentative Ruling: The motion will be granted.

The United States, on behalf of the United States Department of Education,

moves to dismiss this adversary proceeding because the plaintiffs, Chris and Tracy Andrews, who are also the debtors in the underlying bankruptcy case, did not properly serve the summons and complaint as prescribed by Fed. R. Civ. P. 4(m), made applicable by Fed. R. Bankr. P. 7004(a)(1), and in accordance with Fed. R. Bankr. P. 7004(b)(5). Rule 4(m) requires the service of a complaint within 120 days of its filing and Rule 7004(b)(5) requires service on an agency of the United States "by mailing a copy of the summons and complaint to the United States as prescribed in [Fed. R. Bankr. P. 7004(b)(4)]."

Rule 7004(b)(4) requires service on the United States "by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United State attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United State at Washington, District of Columbia."

Rule 4(m) requires a court to extend the 120-day period if the plaintiff establishes good cause for failure to serve within the 120 days.

The subject adversary proceeding complaint was filed on February 20, 2009. The United States sent three letters to the plaintiffs in March, May and June 2009, respectively, apprising them of the service requirements of the foregoing federal rules. The United States has evidence that the plaintiffs received the March letter, which was sent by certified mail with return receipt.

On June 12, 2009, the plaintiffs filed a status report with the court, admitting that they must but have not yet served the United States Attorney for the Eastern District of California and the Attorney General of the United States. See Docket No. 9 at 2.

The court has reviewed the docket and has discovered no proof of service reflecting service on the United States Attorney for the Eastern District of California or service on the United States Attorney General. The only proof of service on file with the court, filed on February 26, 2009, reflects service on the United States Department of Education in Richmond, Virginia, in San Francisco, California, and in Greenville, Texas. See Docket No. 6. However, the proof of service does not indicate service on the United States Attorney for the Eastern District of California or the United States Attorney General.

Moreover, given the March letter sent by the United States to the plaintiffs regarding service, and given the plaintiffs' own admission in their June 12 status report that they still have to serve the United States Attorney and Attorney General, the court concludes that the plaintiffs have had ample opportunity to serve the defendant properly and within the prescribed 120-day period. The court also concludes that the plaintiffs' failure to effectuate proper and timely service is without excuse.

Accordingly, the motion will be granted. The case will be dismissed.

33. 09-33366-A-7 MAROSARIO EXCONDE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-8-09 [5]

Tentative Ruling: The petition will be dismissed.

The debtor failed to file a master address list with the petition as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. The deadline

for filing the list has passed and the notice of the commencement of the case was served on July 10, 2009. This is cause for dismissal. See 11 U.S.C. § 707(a) (1).

34. 09-31667-A-7 RACHAEL/DENIS BUCKLEY HEARING - U.S. TRUSTEE'S MOTION TO
UST #1 DISMISS CASE FOR CAUSE
7-23-09 [12] O.S.T.

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

The U.S. Trustee moves the court to dismiss the case on the basis of cause pursuant to section 707(a) (3) because the debtors failed to apprise the trustee of their respective businesses, which had been operating for five weeks post-petition, before the trustee learned that the businesses are operating at the meeting of creditors.

The debtors have been operating a construction business and a realty business post-petition, including receiving and transferring funds, incurring debt, and rendering services. None of the business operations have been approved by the court. Moreover, the debtors' schedules and statements disclosed no information about the existence or operation of the businesses. For instance, the petition did not list the debtors' dbas, no Business Income and Expense worksheets were filed, Schedules I and J did not disclose the debtors' sources of income, Schedule B did not list any of the debtors' business account(s), and the schedules did not list any business debts. Also, the debtors' counsel did not inform the trustee about the existence or operation of the businesses. The trustee did not learn about the businesses until five weeks after the June 9 petition date, on July 15.

11 U.S.C. § 707(a) provides that the court may dismiss a case after notice and a hearing only for cause, including (1) unreasonable delay by the debtor that is prejudicial to creditors . . . and (3) failure of the debtor to file within 15 days or other time period provided by the court, after the petition date, the information required by paragraph one of section 521, but only on motion by the U.S. Trustee.

The court agrees with the U.S. Trustee. Section 521(a) requires the debtors to file schedules and statements disclosing all of their assets and liabilities, including businesses they own that are not separate legal entities. See 11 U.S.C. § 521(a) (1) (B) (i) and (iii). The debtors did not disclose within 15 days of the petition date their businesses, their business assets or business liabilities.

Further, this is a liquidation proceeding and business operations are prohibited absent permission from the court. And, even if permission is warranted, only the trustee may be allowed to operate a business in a chapter 7 case. See 11 U.S.C. § 721. Undoing hundreds of thousands of dollars in post-petition transactions that transpired in the ordinary course of the debtors' businesses over a five-week period would be unduly burdensome and costly to the bankruptcy estate. The failure of the debtors, and particularly their counsel, to inform the trustee of the businesses and their operation has prejudiced the estate, effectively precluding the trustee from timely assessing the estate's interest in the businesses and assessing their liabilities. In addition, the failure to list business debts on the schedules has prejudiced the creditors holding those debts by depriving them from notice of the bankruptcy and depriving them from exercising their rights pursuant to the Bankruptcy Code. The court concludes that the above is cause for dismissal pursuant to section

707(a). Accordingly, the motion will be granted and the case will be dismissed.

35. 09-32268-A-7 SARA/JACK THORNTON HEARING - MOTION FOR
JWC #1 RELIEF FROM AUTOMATIC STAY
TRANSPORT FUNDING, LLC, VS. 7-13-09 [11]

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

The motion will be granted.

The movant, Transport Funding, seeks relief from the automatic stay with respect to a 2005 Volvo Tractor. The vehicle has a value of \$30,000 and its secured claim is approximately \$51,266. 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. The court also notes that the trustee filed a report of no distribution on July 23, 2009. And, in the statement of financial affairs, the debtor has indicated that the vehicle was surrendered on June 4, 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 repossess its collateral, unless already repossessed or surrendered, 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.

36. 08-23769-A-7 RENATO/JULIANA OINEZA CONT. HEARING - OBJECTION TO
RJH #4 CLAIM OF THE GOLDEN ONE CREDIT
UNION
5-13-09 [70]

Tentative Ruling: The objection will be sustained.

On June 27, 2008, claimant The Golden One Credit Union filed a part secured, part unsecured proof of claim in the total amount of \$11,934.27 (claim no. 5). The secured portion of the claim is in the amount of \$10,000 and the unsecured portion of the claim is in the amount of \$1,934.27. The collateral for the secured portion of the claim is a 2004 Honda Accord.

The trustee objects to the unsecured portion of the claim, arguing that the debtors entered into a reaffirmation agreement with Golden One, reaffirming \$12,113.96 of debt secured by the vehicle. The agreement was filed with the court on June 25, 2008. The debtor was represented by counsel, Stuart Price.

Golden One has filed an opposition, arguing that claims are determined as of the petition date, that claims may be disallowed only pursuant to one of the grounds in section 502(b), and that a reaffirmation merely renders the underlying contract enforceable.

A reaffirmation agreement is a post-petition agreement between the debtor and a creditor where the debtor agrees to repay in full or in part the pre-petition debt the debtor owes the creditor. In this case, Golden One filed a proof of claim in the total amount of \$11,934.27. Because the vehicle had a value of \$10,000 as of the petition date, the unsecured portion of the claim is \$1,934.27.

However, the debtors entered into a reaffirmation agreement with Golden One in or about June 2008, reaffirming \$12,113.96. In other words, the debtors have reaffirmed little more than the full amount of Golden One's claim. This means that they have reaffirmed and are liable for the unsecured portion of Golden One's claim in full. Nevertheless, Golden One wishes to recover the unsecured portion of its claim from the bankruptcy estate also. The court will not allow this because it would permit Golden One to recover the unsecured portion of its claim twice, assuming 100% dividend to creditors, once from the debtors under the terms of the reaffirmation agreement and once from the bankruptcy estate via its proof of claim. Accordingly, the objection will be sustained.

37. 09-32169-A-7 ENRIQUE PAEZ AND HEARING - MOTION FOR
WGM #1 MARICELA GARCIA RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK N.A., VS. 7-13-09 [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 areal property in Chowchilla, California. The property has a value of \$250,000 and it is encumbered by claims totaling approximately \$405,483. The movant's deed is in first priority position and secures a claim of approximately

\$365,537.

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

38. 09-29471-A-7 GEMMA SMITH HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, LLC, VS. 7-15-09 [13]

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

The motion will be granted.

The movant, Aurora Loan Services, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$115,000 and it is encumbered by claims totaling approximately \$298,174. 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 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.

39. 09-30672-A-7 LEE/SANDRA HEARNEY HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
GOLDEN 1 CREDIT UNION, VS. 7-11-09 [19]

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

The motion will be granted.

The movant, The Golden One Credit Union, seeks relief from the automatic stay as to a real property in Pioneer, California. The property has a value of \$208,025 and it is encumbered by claims totaling approximately \$271,158. See Schedule A. 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 \$225,956.

The court concludes that there is no equity in the property 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 14, 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.

40. 09-32172-A-7 REN LEFFEW HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-6-09 [9]

Tentative Ruling: The petition will be dismissed.

The petition was filed on June 15, 2009. This order to show cause was issued because the debtor failed to file the statement of current monthly income and means test calculation, schedules A through J, the statement of financial affairs, the statistical summary, and the summary of schedules, as required by Bankruptcy Rules 1007(b)(1), (c), 11 U.S.C. § 521(a), and 11 U.S.C. § 707(b)(2)(C). This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

41. 09-30474-A-7 RODNEY/SUSAN FIGGATT HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MORTGAGE, INC., VS. 7-16-09 [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, National City Mortgage, Inc., seeks relief from the automatic stay as to a real property in Rio Vista, California. The property has a value of \$210,000 and it is encumbered by claims totaling approximately \$334,523. 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 \$179,939.

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

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.

42. 09-30575-A-7 PRISCILLA CLEERE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-10-09 [11]

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

This order to show cause was issued because the debtor failed to attend a meeting of creditors scheduled for and held on July 8, 2009.

The debtor responds that her counsel mistakenly filed two cases. The instant is the latter of the two cases. The debtor had intended to seek dismissal of this case and pursue only the earlier-filed case. Hence, she had advised the trustee of her intention to seek dismissal of this case. "The debtor was advised there would be no need to attend the Meeting of Creditors because of the plan to dismiss that case." But, the court dismissed the earlier case and now she wishes to pursue this case. Given that the debtor was told that there would be no need to attend the creditors' meeting, the court will discharge this order to show cause.

However, if the debtor fails to attend the continued meeting of creditors, on August 5, 2009 at 7:30 a.m., this case will be dismissed without further notice to the debtor.

43. 09-30575-A-7 PRISCILLA CLEERE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-16-09 [13]

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

This order to show cause was issued because the debtor did not pay the petition filing fee of \$299, as required by Fed. R. Bankr. P. 1006(a).

The debtor responds that her counsel mistakenly filed two cases. The instant is the latter of the two cases. While the debtor had intended to seek dismissal of this case and pursue only the earlier-filed case, in which the court had already granted a waiver of the filing fee, the court dismissed the earlier case. Now, she wishes to pursue this case. She has attached an application for waiver of the filing fee in this case to the response. The application contains information that is identical to the information in the filing fee waiver application in the debtor's prior case. Given this, the court will grant waiver of the filing fee in this case. This order to show cause will be discharged.

44. 09-31879-A-7 CHARLES/PILAR BROUSSARD HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES LLC, VS. 7-14-09 [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, Aurora Loan Services, seeks relief from the automatic stay as to a real property in Somerset, California. The property has a value of \$375,000 and it is encumbered by claims totaling approximately \$679,326. The movant's deed is in first priority position and secures a claim of approximately \$497,582.

The court concludes that there is no equity in the property 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 14, 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.

45.	08-31480-A-7 WILLIAM GLOVER 09-2080 DB #1 JOHN ROBERTS, VS. FRANCES GLOVER, ET AL.	HEARING - PLAINTIFF'S MOTION FOR RECONSIDERATION OF MAY 7, 2009 ORDER 6-18-09 [21]
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Tentative Ruling: The motion will be granted in part.

The plaintiff, John Roberts, who is also the trustee of the underlying bankruptcy case, moves:

(1) to amend its May 7, 2009 order, which stays the prosecution of the subject adversary proceeding until defendant Jonathan Glover's active military duty is concluded; the requested amendments are (i) to update the court with changes in his military orders, (ii) to report his military status to the court every six months, and (iii) to notify the court within 14 days after he is no longer on active duty.

(2) to lift the stay of the prosecution to permit the plaintiff to depose defendant Jonathan Glover during leave time after he completes basic and advanced individual training, unless he shows that he has exercised due diligence in making himself available for a deposition,

(3) to lift the stay of the prosecution of this action "if Mr. Glover fails to show he is in active duty which materially affects his ability to appear," and

(4) to order defendant Jonathan Glover to include the letters required by 50 U.S.C. App. § 522(b)(2)(A) and (B) in his six month reports to the court.

The basis for the plaintiff's motion is that defendant Jonathan Glover's military orders requiring him to report for duty on April 16 were amended, changing his reporting date to on or about June 1. Yet, he did not disclose the amended reporting order to the court or the plaintiff.

Defendant Jonathan Glover opposes the motion, arguing that the plaintiff has shown no newly discovered information or changed circumstances. The plaintiff has filed a reply.

The court's May 7 order provides that "[t]he court may reconsider or amend this stay for good cause on appropriate notice and after a hearing." Defendant Jonathan Glover's military reporting orders had been amended, delaying his active duty reporting by approximately one and one-half months, from April 16 to May 27. See Exhibit to Opposition. The opposition does not deny this. It even admits that "there may have been a short delay of the original tentative date." Yet, the opposition does not explain why defendant Jonathan Glover did not disclose the one and one-half month delay in his active duty reporting to the court and to the plaintiff. The failure to disclose the delay in reporting is good cause for amending the order.

The court will amend its May 7 order to require defendant Jonathan Glover to report his military status to the court every six months and to notify the court within five calendar days after he is released from active duty for any period of time exceeding five calendar days. No other relief will be awarded. While defendant Jonathan Glover is on active duty, the court will not lift the stay on the prosecution of this action. The motion will be granted in part.

46. 09-34284-A-11 JOHN NERWINSKI HEARING - ORDER TO SHOW
CAUSE WHY A PATIENT CARE OMBUDSMAN
SHOULD NOT BE APPOINTED
7-10-09 [7]

Tentative Ruling: Appearance by the debtor is mandatory.

This order to show cause was issued because the debtor has indicated on his petition that his business is a health care business. He is a dentist.

11 U.S.C. § 333(a)(1) provides that:

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

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

Accordingly, the debtor shall appear at the August 3 hearing and show cause why a patient care ombudsman should not be appointed.

47. 09-29985-A-7 ANGELA/STEVEN MCDANIEL CONT. HEARING - MOTION FOR
MBJ #1 RELIEF FROM AUTOMATIC STAY
SIERRA CENTRAL CREDIT UNION, VS. 7-8-09 [13]

Tentative Ruling: The motion will be granted.

The movant, Sierra Central Credit Union, seeks relief from the automatic stay with respect to a 2006 Liberty vehicle. The vehicle has a value of \$12,000 and its secured claim is approximately \$20,025. See Schedules B & D.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. And, the debtor has surrendered already the vehicle to the movant. This is cause for the granting of relief from stay.

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

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

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

48. 06-21891-A-7 THOMAS PISHOS HEARING - MOTION FOR
08-2023 PA #4 SUMMARY JUDGMENT OR IN THE
SUSAN SMITH, VS. ALTERNATIVE FOR SUMMARY
BONNIE PISHOS, ET AL. ADJUDICATION OF FACTS
7-6-09 [380]

Tentative Ruling: The motion will be denied.

Defendants National City Mortgage and Ghaus Malik move the court for summary judgment, alleging that laches bars the pending claims against the defendants.

In the alternative, NCM and Malik move for summary adjudication of the facts outlined in their statement of undisputed facts.

The plaintiff, Susan Smith, who is the trustee in the underlying bankruptcy case, opposes the motion, arguing that (1) the court should not rule on a laches defense on a summary judgment motion because the defense requires a fact-sensitive inquiry, (2) that laches is not a defense to avoidance claims as a matter of law, and (3) the defendants have not met the requirements of a laches defense in this case.

Mr. Malik and National City have filed a 28-page reply, rearguing many of the points argued in their motion. Their principal argument is that Kenneth Sanders, the plaintiff's predecessor in interest, did not investigate the transfer of the Highway property and that they were prejudiced by this because Mr. Malik proceeded to purchase the property and build upon it.

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

A successful laches defense requires a proof of (i) lack of diligence by the party against whom the defense is asserted and (ii) prejudice to the party asserting the defense. Beaty v. Selinger (In re Beaty), 306 F.3d 914, 926-27 (9th Cir. 2002).

But, in avoidance actions, laches does not apply as a matter of law. "Courts . . . have generally held that laches will not operate as a bar to an otherwise timely avoidance claim because § 546(a) provides a specific statutory time limitation for bringing the action." Gross v. Petty (In re Petty), 93 B.R. 208, 212 (B.A.P. 9th Cir. 1988).

While the Ninth Circuit BAP has held that laches does not apply as a matter of law in avoidance actions, such as the action here, even if laches were available as a defense, under the facts presented by the defendants the court is not convinced that laches bars the plaintiff's claims.

The first element of laches requires an examination of the length and circumstances surrounding the delay of the plaintiff in bringing the instant action. Beaty at 927. The statute of limitations on the section 547 and section 548 claims was within two years after the entry of the order for relief. See 11 U.S.C. § 546(a)(1). The statute of limitations on the fraudulent conveyance claims pursuant to California law was within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant. See Cal. Civ. Code § 3439.09(a), (b).

Thomas Pishos, the debtor in the underlying bankruptcy case, filed his petition on June 2, 2006. The plaintiff seeks to avoid transfers of property dating back to September 14, 2005. The plaintiff filed the instant action on January 10, 2008. This was approximately five months before the expiration of the two-year statute of limitations of section 546(a)(1) and was approximately 20 months before the expiration of the four-year statute of limitations of Cal. Civ. Code section 3439.09(a), (b). Given this, the court is satisfied that the plaintiff has not lacked diligence in commencing this action.

The defendants contend that the plaintiff's predecessor, trustee Kenneth Sanders, lacked diligence by failing to investigate the transfer of the Highway 88 property to Bonnie Pishos, failing to communicate with Bonnie Pishos about the transfer, failing "to prevent" Bonnie Pishos from transferring the property, failing to record the bankruptcy petition in San Joaquin County, and failing to commence an action for the avoidance of the transfer.

Mr. Sanders served as trustee in the underlying bankruptcy case from June 2, 2006, the petition date, to September 10, 2007, when he resigned as trustee from the case, and plaintiff Susan Smith was appointed as trustee. The defendants specifically allege that Mr. Sanders held two meetings with the debtor in July 2006, when he was apprised of the transfer of the Highway 88 property to Bonnie Pishos, but he did not investigate its transfer. The only evidence supporting these allegations is a declaration of the debtor, Thomas Pishos, filed with the reply to the plaintiff's opposition. The declaration though does not state that Mr. Sanders did not investigate the transfer of the Highway 88 property to Bonnie Pishos. It merely states that after the July 18, 2006 meeting, Mr. Sanders did not contact the debtor to ask questions about the Highway 88 property. The declaration only highlights what the debtor told Mr. Sanders at the July 18 meeting, but does not state anything about what questions Mr. Sanders asked of the debtor. The declaration is especially careful in not stating that Mr. Sanders did not ask the debtor questions about the Highway 88 property at the July 18, 2006 meeting. Also, despite admitting receipt of the electronic recording of the July 18, 2006 meeting between Mr. Sanders and the debtor on July 7, 2009, the defendants have not produced any evidence of that meeting, except for the debtor's declaration.

From the above and other evidence in the record, including the transcript of the July 12, 2006 meeting between Mr. Sanders and the debtor, the court disagrees that Mr. Sanders lacked diligence. The court concludes that Mr. Sanders investigated the transfer of the Highway 88 property from the debtor to Bonnie Pishos, but after he was told that the property was transferred to Bonnie Pishos pursuant to a "divorce court order," he ceased his investigation.

The defendants complain about Mr. Sander's failure to record the debtor's bankruptcy petition with the recorder's office of San Joaquin County, where the Highway 88 property is located. They contend that this would have put Mr. Malik on notice in his purchase of the property from Bonnie Pishos "that the bankruptcy case [of her former spouse] could somehow taint the transfer."

The court disagrees that recording the debtor's bankruptcy petition with San Joaquin County would have provided any notice to Mr. Malik in his purchase of the property from Bonnie Pishos. By the time he purchased the property, in June 2007, the debtor and Bonnie Pishos had already finalized their divorce and property division nearly 15 months earlier, in March 2006. Thus, at the time Bonnie Pishos sold the property to Mr. Malik, she had good and transferable title of the property.

Further, the court has evidence that Mr. Malik and National City themselves did not exercise diligence in completing the purchase of the property from Bonnie Pishos because they failed to discover the \$1.175 million judicial lien GE had recorded against the property. From this, the court infers that recording the debtor's bankruptcy petition with San Joaquin County would not have necessarily prevented the purchase of the property by Mr. Malik. If the defendants failed to discover a \$1.175 million lien on the property, the court is not convinced that they would have discovered or deemed important a recorded bankruptcy petition of the seller's former spouse. Stated differently, the defendants' own lack of diligence in completing the purchase of the property convinces the court that the absence of a recorded bankruptcy petition did not cause them prejudice.

The court is satisfied that the bankruptcy estate had diligence in commencing the action as it did, within the limitations periods prescribed by the Bankruptcy Code and California law. The motion for summary judgment based on laches will be denied.

The court will deny also the defendants' request for summary adjudication of the facts stated in the statement of undisputed facts. Some of the facts are incomplete and tend to mislead and suggest conclusions that are unsupported by the record. For instance, the defendants' statement quotes portions from the application of Mr. Sanders for the employment of the Desmond law firm as counsel for the estate, to support the allegation that Mr. Sanders "did not seek the employment of [the Desmond law firm] with regard to any aspect of [the Highway 88 property] transfer." This is a misstatement of the employment application because it, as most such applications, contains a "for all other services" catch-all provision. In addition, the plaintiff disputes many key facts proffered by the defendants. For instance, the plaintiff disputes that Mr. Sanders has admitted to never investigating the Highway 88 property transfer and disputes that Mr. Sanders' failure to record the bankruptcy petition in San Joaquin County did not put Mr. Malik on notice of the debtor's bankruptcy case.

Finally, the history of this case shows that the parties are engaged in what the plaintiff has termed scorched-earth litigation. The instant motion is one example of this. The memorandum of points and authorities is 35 pages long and the reply to the opposition is 28 pages long, yet they discuss only the defense of laches. This is one reason for which the court wishes to avoid the piecemeal adjudication of the case. The motion will be denied.

To discourage the parties from filing future pleadings, such as the instant points and authorities and reply to opposition filed by Mr. Malik and National City, the court will impose a 10-page limit on any pleadings filed in this action. Absent prior court approval, pleadings in excess of 10 pages will be stricken to the extent they exceed the 10-page limit.

49. 09-31592-A-7 FERDINAND/BERNADETTE AQUINO HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
BAC HOME LOANS SVCING., L.P., VS. 7-20-09 [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, BAC Home Loans Servicing, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$131,000 and it is encumbered by claims totaling approximately \$368,561. 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 \$326,941.

The court concludes that there is no equity in the property 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 17, 2009.

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

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

50. 09-31393-A-7 WILLIAM WERNER
WGM #1
EVERHOME MORTGAGE CO., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-11-09 [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, Everhome Mortgage Company, seeks relief from the automatic stay as to a real property in Auburn, California. The property has a value of \$250,000 and it is encumbered by claims totaling approximately \$360,588. 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 14, 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.

51. 09-31993-A-7 GREGORY/TONI VILORIA HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST CO., VS. 7-17-09 [10]

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

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the

automatic stay as to a real property in Tracy, California. The property has a value of \$180,000 and it is encumbered by claims totaling approximately \$341,028. The movant's deed is in first priority position and secures a claim of approximately \$313,022.

The court concludes that there is no equity in the property 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 14, 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.

52. 09-30396-A-7 RICHARD/MARY MUNOZ HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
HSBC MORTGAGE CORP. USA, VS. 7-14-09 [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, HSBC Mortgage Corporation U.S.A., seeks relief from the automatic stay as to a real property in Woodland, California. The property has a value of \$170,000 and it is encumbered by claims totaling approximately \$313,257. The movant's deed is in second priority position and secures a claim of

approximately \$35,780.

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

FINAL RULINGS BEGIN HERE

53. 09-32900-A-7 PACIFIC FIRST LINDEN ROAD HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-13-09 [15]

Final Ruling: This order to show cause will be discharged as moot because the petition was previously ordered dismissed.

54. 09-32900-A-7 PACIFIC FIRST LINDEN ROAD HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-14-09 [16]

Final Ruling: This order to show cause will be discharged as moot because the petition was previously ordered dismissed.

55. 09-32303-A-7 BRIAN/LISA PUGMIRE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-9-09 [9]

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

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment fee in the amount of \$75 due on July 3, 2009 was not paid.

However, the debtor paid the installment fee on July 14, 2009. No prejudice has resulted from the delay.

56. 09-30806-A-7 RICHARD/JANICE JONES HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
HSBC BANK USA, N.A., VS. 7-1-09 [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, HSBC Bank U.S.A., seeks relief from the automatic stay as to a real property in Benicia, California. The property has a value of \$517,500 and it is encumbered by claims totaling approximately \$811,140. The movant's deed is in first priority position and secures a claim of approximately \$631,041.

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

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

57. 09-27008-A-7 TROY AGUERO AND HEARING - MOTION FOR
MBB #1 CHRISTINA WESTERLUND RELIEF FROM AUTOMATIC STAY
AMERICAS WHOLESALE LENDER, VS. 7-1-09 [20]

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

The motion will be granted.

The movant, Americas Wholesale Lender, seeks relief from the automatic stay as to a real property in Fair Oaks, California. The property has a value of \$206,000 and it is encumbered by claims totaling approximately \$338,798. The movant's deed is in first priority position and secures a claim of approximately \$318,179.

The court concludes that there is no equity in the property 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 20, 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.

58. 09-26615-A-7 MARVIS HOOD HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-14-09 [14]

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

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment fee in the amount of \$75 due on July 7, 2009 was not paid.

However, the debtor paid the installment fee on July 21, 2009. No prejudice has resulted from the delay.

59. 09-30916-A-7 JOSHUA/NIAMH CONNER HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
HSBC BANK USA, N.A., VS. 7-1-09 [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, HSBC Bank U.S.A., seeks relief from the automatic stay as to a real property in Lincoln, California. The property has a value of \$200,000 and it is encumbered by claims totaling approximately \$400,513. The movant's deed is in first priority position and secures a claim of approximately \$345,366.

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

60. 09-31123-A-7 VERA KUZMENKO HEARING - MOTION FOR
RWD #1 RELIEF FROM AUTOMATIC STAY
HARVARD BUSINESS PARK, LLC, VS. 7-6-09 [13]

Final Ruling: The motion will be dismissed without prejudice because the proof of service indicates that the debtor was served at an incorrect address, 5777 Madison Ave., Ste 1020, Sacramento, CA 95841. The correct address is 3941 Bankhead Rd. Loomis, CA 95650. Accordingly, notice is defective.

61. 09-31924-A-7 ROMANA DOLLAGA HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A., VS. 7-2-09 [9]

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

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Elk Grove, California. The property has a value of \$250,000 and it is encumbered by claims totaling approximately \$371,259. The movant's deed is in first priority position and secures a claim of approximately \$306,935.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on January 21, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

62. 09-32624-A-7 DIOSCORO/MARIA OREA HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-9-09 [8]

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

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

However, the debtors filed all missing documents on July 8, 2009. No prejudice has resulted from the delay.

63. 08-36128-A-7 JOHN/JEAN QUINATA HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-9-09 [45]

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

This order to show cause was issued because the debtors failed to file the statement of current monthly income and means test calculation, as required by

11 U.S.C. § 707(b)(2)(C).

However, the debtors filed the statement on July 21, 2009. No prejudice has resulted from the delay.

64. 09-28335-A-7 DOUGLAS BUCHANAN AND HEARING - MOTION FOR
ASW #1 CORIN CARTER RELIEF FROM AUTOMATIC STAY
U.S. BANK N.A., VS. 6-29-09 [12]

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

The motion will be granted.

The movant, U.S. Bank, seeks relief from the automatic stay as to a real property in Rocklin, California. The property has a value of \$302,500 and it is encumbered by claims totaling approximately \$375,452. The movant's deed is in first priority position and secures a claim of approximately \$352,976.

The court concludes that there is no equity in the property 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. 09-29736-A-7 YOLANDA/TROY TAYLOR

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-17-09 [23]

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 \$100 due on July 15, 2009 was not paid.

However, the debtor paid the installment fee on July 21, 2009. No prejudice has resulted from the delay.

66. 09-20339-A-7 ALFRED/GEORGENE LORD
MBB #1
COUNTRYWIDE HOME LOANS, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-2-09 [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, Countrywide Home Loans, Inc., seeks relief from the automatic stay as to a real property in Gardnerville, California. The schedules list the location of the property in the State of Nevada.

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

Given the entry of the debtor's discharge on April 13, 2009, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of \$485,000 and it is encumbered by claims totaling approximately \$684,781. The movant's deed is in first priority position and secures a claim of approximately \$546,781.

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

In the event the property is located in California, the court determines that this bankruptcy proceeding has been finalized for purposes of 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. 09-31139-A-7 GUADALUPE RAMIREZ HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
HSBC BANK USA, N.A., VS. 7-1-09 [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, HSBC Bank U.S.A., seeks relief from the automatic stay as to a real property in Lodi, California. The property has a value of \$200,000 and it is encumbered by claims totaling approximately \$364,440. 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.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of 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.

68. 09-29241-A-7 ANTHONY/JENNIFER ABREU HEARING - MOTION FOR
ADW #1 RELIEF FROM AUTOMATIC STAY
MIKE KAY, VS. 7-7-09 [19]

Final Ruling: The motion will be dismissed without prejudice.

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

Further, the notice of hearing violates Local Bankruptcy Rule 9014-1(d)(3), which requires the notice of hearing to indicate whether and when written opposition must be filed. The notice of hearing does not indicate whether and when written oppositions must be filed.

Notice is defective. The motion will be dismissed.

69. 09-22043-A-7 MARK FILKILL HEARING - MOTION TO
CLH #2 AVOID LIEN
VS. GAIL MCNAMARA 7-6-09 [25]

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 responding creditor, 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 to avoid a lis pendens recorded by Gail McNamara on the debtor's Viscount Way real property in Citrus Heights, California. He also moves for the avoidance of a judicial lien held by Gail McNamara on the debtor's Viscount Way real property. But, the lis pendens relates to the same state court action in which Mr. McNamara obtained the judgment that is basis

for the judicial lien against the Viscourt Way property. And, the lis pendens is not a lien, it is simply a notice of pending action. Avoidance of a lis pendens pursuant to section 522(f) (1) (A) does not exist. Thus, there is only one judicial lien against the property.

The judgment was entered against the debtor in favor of Gale McNamara for the sum of \$115,571.23 on January 13, 2009. The abstract of judgment was recorded with Sacramento County on January 14, 2009. That lien attached to the debtor's residential real property located on Viscourt Way in Citrus Heights, California.

Mr. McNamara has filed no opposition to this motion.

The motion will be granted pursuant to 11 U.S.C. § 522(f) (1) (A). Pursuant to the debtor's Schedule A, the Viscourt Way real property has an approximate value of \$100,000 as of the date of the petition. The unavoidable liens total \$148,320 on that same date, securing one deed held by Countrywide. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b) (1)&(5) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f) (2) (A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b) (1) (B).

As a final note, the debtor served this motion only on counsel for Mr. McNamara. Even though Mr. McNamara did not oppose this motion, he opposed the related lien avoidance motion (DCN CLH #1), served only on his counsel as well, without raising the service deficiency issue. Hence, Mr. McNamara has waived challenging the service deficiency issue in this motion.

70. 09-25044-A-7 RAYMOND/JENNY LOFRANCO HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A., VS. 7-6-09 [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 in part and dismissed in part.

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

Given the entry of the debtor's discharge on July 13, 2009, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of \$241,500 and it is encumbered by claims totaling approximately \$537,932. The movant's deed is in first priority position and secures a claim of approximately \$429,251.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on May 1, 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.

71. 09-30848-A-7 CLEMENCIA ELLIOTT HEARING - MOTION FOR
LLV #1 RELIEF FROM AUTOMATIC STAY
ROSALINDA TRIPPEER, VS. 6-30-09 [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, Rosalinda Trippeer, seeks relief from the automatic stay as to a real property in Anderson, California. The property has a value of \$166,500 and it is encumbered by claims totaling approximately \$166,863. The movant's deed is in first priority position and secures a claim of approximately \$95,307.

The court concludes that there is no equity in the property 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 22, 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.

72. 09-31052-A-7 ALLAN/CATHERINE DINGMAN HEARING - MOTION FOR
HSM #1 RELIEF FROM AUTOMATIC STAY
LINDA MOSIER, VS. 7-7-09 [22]

Final Ruling: The motion will be dismissed without prejudice. The movant has provided only 27 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion states that the motion is being noticed under Local Bankruptcy Rule 9014-1(f)(1), which requires at least 28 days' notice. The notice of hearing requires written opposition at least 14 days before the hearing. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed without prejudice.

73. 08-22956-A-7 K AND M BUILDING MATERIALS, HEARING - MOTION TO
JRR #6 INC. ALLOW TRUSTEE TO PAY ACCOUNTANT
7-20-09 [49]

Final Ruling: The motion will be dismissed without prejudice.

The accountant for the trustee seeks compensation for professional services rendered to the estate. This hearing was set on 14 days' notice of the hearing. Fed. R. Bankr. P. 2002(a)(6) requires a minimum of 20 days' notice of the hearings on motions to approve professional compensation and reimbursement of expenses. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides this amount of notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(a)(6) requires a minimum of 20 days of notice of the hearing and because only 14 days' notice was given, notice is insufficient.

74. 09-30956-A-7 SAUL SALDIVAR HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A., VS. 7-2-09 [17]

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

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Tracy, California. The property has a value of \$200,000 and it is encumbered by claims totaling approximately \$419,850. The movant's deed is in

first priority position and secures a claim of approximately \$396,850.

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

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

The court determines that this bankruptcy proceeding has been finalized for purposes of 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.

75. 09-30660-A-7 SARAH OSBORN
PD #1
U.S. BANK N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-2-09 [15]

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

The motion will be granted.

The movant, U.S. Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$180,000 and it is encumbered by claims totaling approximately \$290,314. The movant's deed is in first priority position and secures a claim of approximately \$217,322.

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

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession

of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of 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.

76. 09-25361-A-7 RAMON/CONNIE QUESADA HEARING - MOTION TO
CLH #1 AVOID JUDICIAL LIEN
VS. FIRESIDE THRIFT CO. 6-16-09 [10]

Final Ruling: The motion will be dismissed without prejudice because the certificate of service does not show that the respondent, Fireside Thrift Co., was served with the motion. Instead, the debtors served an attorney purportedly representing the respondent. However, that attorney has not appeared for the respondent in this case. Unless the attorney agreed to accept service, service was improper. See In re Villar, 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

77. 06-24263-A-7 JOHN/PEGGY DISTEFANO HEARING - MOTION FOR
APN #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO AUTO FINANCE, VS. 7-2-09 [102]

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 Auto Finance, seeks relief from the automatic stay with respect to a 2004 Chevrolet Cavalier. The debtors have contacted the movant indicating an intent to surrender the vehicle. See Declaration of Heidi Spidell at 2. And, the trustee filed a report of no distribution on May 1, 2009. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, dispose of it pursuant to

applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The movant alleges that the value of the vehicle is \$5,605 and its secured claim totals approximately \$6,715. Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing 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.

78. 09-31967-A-7 JUSTIN/JESSICA ELSEY HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-1-09 [9]

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

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

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

79. 09-25571-A-7 ROGER/KATHLEEN VALDIVIA HEARING - MOTION FOR
EAT #2 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 7-2-09 [26]

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

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

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

Given the entry of the debtor's discharge on July 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 \$200,000 and it is encumbered by claims totaling approximately \$284,852. The movant holds the first, second and third deeds against the property, but the motion relates only to the first deed, securing a claim of approximately

\$223,919.

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

80. 09-30672-A-7 LEE/SANDRA HEARNEY HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
GOLDEN 1 CREDIT UNION, VS. 7-24-09 [31]

Final Ruling: The moving party has voluntarily dismissed this motion.

81. 09-32278-A-7 MILLE/STEVEN CURRINGTON HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-6-09 [10]

Final Ruling: This order to show cause will be discharged as moot because the petition previously ordered dismissed.

82. 08-31480-A-7 WILLIAM GLOVER HEARING - TRUSTEE'S MOTION FOR
JRR #2 SALE OF ASSETS FREE AND CLEAR OF
LIENS AND ENCUMBRANCES
7-15-09 [43]

Final Ruling: The motion will be dismissed without prejudice.

The trustee seeks permission to sell property of the estate. The hearing on his motion was set on 19 days' notice to parties in interest. Fed. R. Bankr. P. 2002(a)(2) requires a minimum of 20 days' notice of the hearings on motions to approve the sale of property of the estate. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides this amount of notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(a)(2) requires a minimum of 20 days of notice of the hearing and because only 19 days' was given, notice is insufficient.

83. 09-32282-A-7 AKRAM ALDAFARI HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-6-09 [13]

Final Ruling: This order to show cause will be discharged as moot because the petition was previously ordered dismissed.

84. 09-31283-A-7 EDWARD DIAS HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A., VS. 6-30-09 [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, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Pine Grove, California. The movant has produced evidence that the property has a value of \$205,000 and it is encumbered by claims totaling approximately \$229,260. See Supplemental Declaration of Mighela Cochran ¶7. The movant's deed is the only encumbrance against the property.

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

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

The court determines that this bankruptcy proceeding has been finalized for purposes of 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 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 \$73 due on July 9, 2009 was not paid.

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

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

The motion will be granted.

The movant, Daimler Trust, seeks relief from the automatic stay with respect to a leased 2007 Mercedes Benz E350. The outstanding amount under the lease agreement totals \$40,411. The debtor also has not made one post-petition payment under the lease agreement. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. These facts make it unlikely that the trustee will attempt to assert any interest in the lease. The court also notes that the trustee filed a report of no distribution on July 14, 2009.

The court concludes that the above is cause for the granting of relief from stay.

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

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

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

87. 09-21788-A-11 MC2 WINES HEARING - MOTION FOR
ASK #2 RELIEF FROM AUTOMATIC STAY
BANK OF ALAMEDA, VS. 7-20-09 [168]

Final Ruling: The parties have agreed to interim relief and have also agreed to a final hearing on August 31, 2009 at 9:00 a.m.

88. 09-30396-A-7 RICHARD/MARY MUNOZ HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A., VS. 7-6-09 [9]

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

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Woodland, California. The property has a value of \$170,000 and it is encumbered by claims totaling approximately \$315,544. The movant's deed is in first priority position and secures a claim of approximately \$281,881.

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

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

The motion will be granted.

The movant, Chase Home Finance, seeks relief from the automatic stay as to a real property in Lincoln, California. The property has a value of \$317,500 and it is encumbered by claims totaling approximately \$427,255. The movant's deed is in second priority position and secures a claim of approximately \$104,386.

The court concludes that there is no equity in the property 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 21, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. 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. 09-21797-A-7 CONNECT 2 WIRELESS, INC.
SPA #1

HEARING - MOTION FOR
APPROVAL OF STIPULATION FOR
DISPOSITION OF CERTAIN PROPERTY TO
UNSECURED CREDITOR
7-2-09 [75]

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

The motion will be granted.

Creditor Umpqua Bank seeks the approval of a stipulation between it and the estate for the disposal of property securing the bank's claim. The property includes \$37,532.74 in proceeds from the sale of the debtor's equipment, machinery, and/or supplies, as well as \$29,154 in collected receivables. The receivables total approximately \$478,879.37, but some of them are in dispute.

Under the terms of the stipulation, the trustee has agreed to turn over to the bank the \$37,532.74 in sale proceeds and to turn over any receivables collected, less \$15,000, until the bank's claim is paid in full. While the trustee believes that the bank's claim is over-secured, the disputed receivables make it difficult to determine their value and the extent of the bank's security vis a vis its claim.

11 U.S.C. § 725 permits the estate to dispose of property in which parties other than the estate have an interest, assuming the property has not been disposed of under another section of title 11.

Given that the bank's claim is secured by the property in question and that turnover of the property also will reduce or wholly extinguish any general unsecured claim by the bank, the court will approve the stipulation. The motion will be granted.

91. 09-30498-A-7 JUANITO DELA CRUZ
KAT #1
U.S. BANK N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-17-09 [26]

Final Ruling: The moving party has voluntarily dismissed this motion.