

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 17, 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 SEPTEMBER 14, 2009 AT 9:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 31, 2009, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 8, 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 17, 2009 at 9:00 a.m.

MATTERS FOR ARGUMENT

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

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.

2. 09-35001-A-7 JASON/DOREEN CONLEY HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-28-09 [5]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtors 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. Although the debtors filed the list on July 29, this was not in time for the creditors on the list to be served with the notice of the commencement of the case, which was served on July 30, 2009. The creditors on the late-filed master address list were not served with the notice. This has prejudiced those creditors and is cause for dismissal. See 11 U.S.C. § 707(a)(1). Accordingly, the petition will be dismissed.

3. 09-35001-A-7 JASON/DOREEN CONLEY

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-28-09 [6]

Tentative Ruling: The petition will be dismissed.

The debtors did not file a statement of social security number, either with the petition or within 15 days of its filing, as required by Fed. R. Bankr. P. 1007(f). The trustee takes the debtor's social security number from this statement and includes it on the notice of the commencement of the case that is served on all creditors. Creditors frequently need the social security number to identify the debtor. Thus, the quality of notice may be substantially reduced and perhaps nullified by the absence of the social security number. See Ellett v. Goldberg (In re Ellett), 317 B.R. 134 (Bankr. E.D. Cal. 2004), *affirmed* 328 B.R. 205 (E.D. Cal. 2005), *affirmed* 506 F.3d 774 (9th Cir. 2007). As a result, the failure to file the Statement of Social Security Number may be cause for dismissal. See 11 U.S.C. § 707(a)(1). While the debtors in this case belatedly filed the statement on July 29, this was not in time to include the social security number on the notice of the commencement of the case. It was served on or about July 30. Thus, the late filing caused prejudice to creditors.

4. 09-29502-A-7 ASHFAQ KHAN AND
PA #1 FAROOQA ASHFAQ

HEARING - MOTION TO
EXTEND TIME TO FILE COMPLAINT
8-3-09 [27]

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

The motion will be granted.

Creditor Frank's Quality Meats, Inc., moves for a 73-day extension, from August 21 to November 2, 2009, of the deadlines for filing complaints objecting to discharge and determining the dischargeability of debts pursuant to sections 727 and 523. The basis for the motion is that the debtors added 23 creditors to their schedules on June 29, 2009, yet they did not serve any of the newly added creditors with the amended schedules.

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

This motion was filed on August 3 and it is timely as the deadline for filing sections 727 and 523 complaints is on August 21.

August 17, 2009 at 9:00 a.m.

Fed. R. Bankr. P. 1009(a) requires the debtor, when amending schedules, to serve the amended schedules on the trustee and "any entity affected thereby." The June 29 amendments to schedules D and F added 24 creditors that were not listed in the debtors' original schedules. While the debtors served the trustee and U.S. Trustee with the amended schedules, none of the newly added creditors were served with the amended schedules. See Docket No. 19. The court also does not have any evidence that the newly added creditors were served with any notice of the instant bankruptcy proceeding. This includes notice of three meetings of creditors. This is cause for extension of the deadlines. The motion will be granted and the deadlines will be extended to November 2, 2009 as to all creditors added to the schedules on June 29, but not served with a notice of the amended schedules, including the movant. The debtors shall cure the deficiencies discussed in this ruling within two business days of entry of the order on this motion.

5. 09-33503-A-7 GUY PACE HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 7-27-09 [9]

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

The motion will be granted.

The movant, JP Morgan Chase 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 \$198,974. 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.

6. 09-34403-A-7 MARTHA CASTELLANOS HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-23-09 [4]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor did not file a statement of social security number, either with the petition or within 15 days of its filing, as required by Fed. R. Bankr. P. 1007(f), and did not file a master address list with his petition, as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1.

The trustee takes the debtor's social security number from this statement and includes it on the notice of the commencement of the case that is served on all creditors. Creditors frequently need the social security number to identify the debtor. Thus, the quality of notice may be substantially reduced and perhaps nullified by the absence of the social security number. See Ellett v. Goldberg (In re Ellett), 317 B.R. 134 (Bankr. E.D. Cal. 2004), *affirmed* 328 B.R. 205 (E.D. Cal. 2005), *affirmed* 506 F.3d 774 (9th Cir. 2007). As a result, the failure to file the Statement of Social Security Number may be cause for dismissal. See 11 U.S.C. § 707(a)(1). While the debtor in this case belatedly filed the statement on July 29, this was not in time to include the social security number on the notice of the commencement of the case. It was served on or about July 25. Thus, the late filing caused prejudice to creditors.

Similarly, although the debtor filed a master address list on July 29, the notice of the commencement of the case was already served on or about July 25. As a result, the creditors on the late-filed master address list were not served with the notice. This has prejudiced those creditors and is cause for dismissal. See 11 U.S.C. § 707(a)(1). Accordingly, the petition will be dismissed.

7. 09-31404-A-7 KAREN COCHENOUR HEARING - MOTION FOR
EDH #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A., VS. 8-3-09 [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, U.S. Bank, seeks relief from the automatic stay as to a real property in Benicia, California. The property has a value of \$275,000 and it is encumbered by claims totaling approximately \$480,990. The movant's deed is in first priority position and secures a claim of approximately \$390,990.

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

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| 8. | 08-37209-A-7 CHARANJIT BAINS 09-2115 JMO #1 AMERICAN EXPRESS BANK, FSB, VS. CHARANJIT BAINS | HEARING - MOTION TO COMPEL DEFENDANT'S RESPONSES TO PLAINTIFF'S DISCOVERY REQUESTS 7-10-09 [16] |
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Tentative Ruling: The motion will be granted in part.

The plaintiff, American Express Bank, moves to compel the defendant, Charanjit Bains, who is also the debtor in the underlying bankruptcy, to respond to the plaintiff's first set of interrogatories, first set of request for admissions, and first set of request for production of documents, served on the defendant on April 30, 2009. Responses were due on May 30, 2009. The defendant has not responded.

If the defendant does not respond within ten days of the order on this motion, the plaintiff requests the court to strike the defendant's answer and enter the defendant's default.

Fed. R. Civ. P. 33(b)(2), 34(b)(2), and 36(a)(3), as made applicable here by Fed. R. Bankr. P. 7033, 7034, and 7036, respectively, provide a responding party to interrogatories, request for admissions, and a document production request, with 30 days to respond. The effect of not responding to a request for admissions is that the "matter is admitted, unless within 30 days after

being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." Fed. R. Civ. P. 36(a)(3). As to interrogatories and document production requests, Fed. R. Civ. P. 37(a)(3)(B)(iii) & (iv), as made applicable here by Fed. R. Bankr. P. 7037, permits the party seeking discovery to move to compel responses.

A review of the case docket shows that the defendant has not filed an objection, or any other motion, pertaining to the discovery at issue here. And, the defendant has not responded to this motion. Accordingly, the court will issue an order compelling the defendant to respond to all referenced discovery, within five court days of entry of the order.

Further, in the event the defendant does not comply with this order, the propounded request for admissions will be deemed admitted, as prescribed by Fed. R. Civ. P. 36(a)(3). And, the plaintiff will be permitted to move for recovery of its expenses, including attorney's fees, in bringing this motion. See Fed. R. Civ. P. 37(d)(1)(A)(ii). No other relief is awarded. The motion will be granted in part.

9. 09-33809-A-7 LILIYA MAR HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-24-09 [9]

Tentative Ruling: The petition will be dismissed.

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

10. 09-34309-A-7 ELIAS TAPIA HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-17-09 [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 19, 2009. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

11. 09-34309-A-7 ELIAS TAPIA HEARING - MOTION FOR
EDH #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A., VS. 7-25-09 [9]

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

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

The motion will be granted.

The movant, U.S. Bank, seeks relief from the automatic stay as to a real property in Lodi, California. The property has a value of \$65,000 and it is encumbered by claims totaling approximately \$318,927. See Declaration of Michael Pezzi ¶ 4. 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.

12. 09-29710-A-7 TANISHA SANDIFER HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
HSBC BANK USA N.A., VS. 7-21-09 [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, HSBC Bank U.S.A., seeks relief from the automatic stay as to a real property in Plumas Lake, California. The property has a value of \$200,000 and it is encumbered by claims totaling approximately \$361,787. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on June 24, 2009.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. 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. 09-34410-A-11 HAMILTON MAY CORPORATION, HEARING - ORDER TO APPEAR
BIONICA INC. AND SHOW CAUSE WHY A PATIENT CARE
OMBUDSMAN SHOULD NOT BE APPOINTED
7-13-09 [5]

Tentative Ruling: Appearance by the debtor is mandatory.

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

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 and show cause why a patient care ombudsman should not be appointed.

14. 09-34410-A-11 HAMILTON MAY CORPORATION, HEARING - ORDER TO SHOW
BIONICA INC. CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-24-09 [23]

Tentative Ruling: The order to show cause will be discharged given the impending conversion to chapter 7.

15. 09-34410-A-11 HAMILTON MAY CORPORATION, HEARING - U.S. TRUSTEE'S MOTION TO
UST #1 BIONICA INC. CONVERT CHAPTER 11 CASE
7-15-09 [9]

Tentative Ruling: The case will be converted to chapter 7.

The U.S. Trustee moves for dismissal pursuant to 11 U.S.C. § 1112(b), on the grounds that the debtor does not have counsel before this court and that, with the exception of the summary of schedules and schedules B and G, the debtor has not filed any of its schedules or statements, including a master address list.

Section 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause." For purposes of this subsection, "'cause' includes . . . (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter." 11 U.S.C. § 1112(b)(4)(F).

The court agrees with the U.S. Trustee. The debtor's attorney in the bankruptcy petition, Gregory Gilbert, is also the debtor's CEO. See Declaration Under Penalty of Perjury on Behalf of a Corporation or Partnership. As such, Mr. Gilbert is not a disinterested person within the meaning of section 327(a) and would not be eligible for employment as the debtor's bankruptcy counsel. In other words, the debtor does not have the benefit of bankruptcy legal representation. This is cause for conversion or dismissal pursuant to section 1112(b)(1).

Further, with the exception of the summary of schedules and schedules B and G, the debtor has not filed any of its schedules or statements. This is further cause pursuant to section 1112(b)(1). See 11 U.S.C. § 1112(b)(4)(F).

Conversion to chapter 7 would be in the best interest of the estate as the debtor has scheduled personal property with a value totaling \$2.14 million. Schedule B. Also, the debtor's creditors have been noticed with the notice of bankruptcy case. See Docket No. 36. Hence, the case will be converted to chapter 7.

16. 08-23311-A-7 RANDY LOEWEN
FEC #6
VS. CHRISTOPHER HELSLEY

HEARING - MOTION TO
AVOID LIEN
7-10-09 [71]

Tentative Ruling: The motion will be granted.

The debtor moves to avoid a \$3.909 million judicial lien on his residence, held by Christopher Helsley.

Mr. Helsley opposes the motion, arguing that (1) the debtor's \$350,000 opinion of value for the real property has no foundation, and (2) the court does not have sufficient information to determine whether the \$300,000 consensual encumbrance against the property "may have been placed against the property solely to give the debtor the opportunity to try to avoid claimant's judgment lien."

Initially, the opposition will be stricken as untimely. Opposition was due at least 14 days before the August 17 hearing. This was August 3. But, the opposition was not filed until August 4.

Also, the debtor's opinion of value in the schedules is evidence of value and it may be conclusive in the absence of contrary evidence. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The only foundation that is necessary for the owner of property to opine regarding its value is the owner's ownership of the property. Mr. Helsley has provided the court with no contrary evidence of value. The opposition contains only unsubstantiated allegations.

The deed of trust encumbering the property and securing Cynthia O'Hare's \$300,000 claim is a consensual lien. Consensual liens, regardless of when incurred, are not avoidable pursuant to section 522(f)(1)(A). See Moldo v. Charnock (In re Charnock), 318 B.R. 720, 726 n.6, 727 (B.A.P. 9th Cir. 2004). There is no evidence supporting Mr. Helsley's allegations that this consensual lien was "placed against the property solely to give the debtor the opportunity to try to avoid claimant's judgment lien." And, it is not the debtor's burden to disprove this allegation when the respondent has supported it with not evidence.

Turning to the merits of the motion, a judgment was entered against the debtor in favor of Christopher Helsley for the sum of \$3,909,000 on November 13, 2007. The abstract of judgment was recorded with Tehama County on January 25, 2008. That lien attached to the debtor's residential real property located in Red Bluff, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has an approximate value of \$350,000 as of the date of the petition. The unavoidable liens total \$310,710.01 on that same date. The unavoidable liens consist of a mortgage in the amount of \$300,000 in favor of Cynthia O'Hare, a child and spousal support lien in the amount of \$10,600, and outstanding property taxes in the amount of \$110.01. The debtor claimed an exemption pursuant to Cal. Code Civ. Proc. § 704.730(a)(2) in the amount of \$75,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. §

349(b) (1) (B) .

17. 09-33311-A-7 ABEL/GERALDINE JACQUEZ HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, VS. 7-21-09 [8]

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

The motion will be granted.

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$131,000 and it is encumbered by claims totaling approximately \$327,991. The movant's deed is the only encumbrance against the property.

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

18. 09-32212-A-7 MARVIN/BARBARA LOPEZ
WGM #1
ONE WEST BANK, F.S.B., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-21-09 [9]

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

The motion will be granted.

The movant, One West Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$254,500 and it is encumbered by claims totaling approximately \$493,740. The movant's deed is in first priority position and secures a claim of approximately \$411,316.

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

19. 09-29517-A-7 SURAYA OMARY

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-14-09 [9]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to attend a meeting of creditors scheduled for and held on July 10, 2009. This is cause for dismissal. See 11 U.S.C. § 707(a) (1).

20. 09-21019-A-7 LUCINDA BAUER CONT. HEARING - MOTION FOR
LKB #1 ORDER OF CONTEMPT AND FOR
SANCTIONS FOR VIOLATION OF
AUTOMATIC STAY
4-24-09 [77]

Tentative Ruling: The motion will be granted in part.

The debtor moves the court to hold creditor Northeast Nebraska Credit Union in contempt for violations of the automatic stay, and to award sanctions, including actual damages, the costs of bringing this motion consisting of the debtor's attorney's fees, and punitive damages. The debtor alleges that NNCU violated the automatic stay by sending her collection notices post-petition, billing her for missed loan payments, assessing late fees, and withdrawing funds from the debtor's bank accounts.

NNCU responds, acknowledging that it continued to send post-petition notices and account statements to the debtor and that it withdrew money from the debtor's business checking account post-petition. But, since discovering this, NNCU has corrected its software system to flag bankruptcy accounts and has returned all funds withdrawn from the debtor's account.

11 U.S.C. § 362(a) (5), (6) provides that the filing of a bankruptcy petition operates as a stay on any act to enforce against property of the debtor any lien, to the extent that such lien secures a claim that arose before the commencement of the case and ii) on any act to collect or recover a claim against the debtor that arose before the commencement of the case. 11 U.S.C. § 362(k) (1) prescribes that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

In determining whether and to what extent to award punitive damages, courts consider the nature of the violations, the amount of compensatory damages awarded, and the wealth of the party who has committed the violations. Prof'l Seminar Consultants, Inc. v. Sino American Tech., 727 F.2d 1470, 1473 (9th Cir. 1984).

NNCU has admitted to violations of the automatic stay by sending post-petition notices and account statements, and withdrawing funds from the debtor's NNCU account post-petition. NNCU has withdrawn a total of \$4.13 from the debtor's account post-petition. NNCU admits to making three withdrawals from the debtor's bank account of \$0.01 on January 11, 2009, \$4.11 on March 30, 2009, and \$0.01 on April 11, 2009. While the debtor contends that NNCU has withdrawn an additional \$30 for late charges assessed on one of her two unsecured loan accounts, NNCU has produced evidence refuting this allegation. See Bauer Decl. ¶¶ 18, 19; see also Korth Decl. ¶ 5. The debtor is not entitled to actual damages because NNCU has already returned the funds it withdrew back to the debtor. See Korth Decl. ¶ 4.

Next, pro se litigants are not entitled to attorney's fees, even when the pro se litigant is an attorney. See Elwood v. Drescher, 456 F.3d 943, 947-48 (9th Cir. 2006) (citing Kay v. Ehrler, 499 U.S. 432 (1991), which holds that pro se

attorney litigants are not entitled to attorney's fees in the successful litigation of civil rights claims). Elwood has recognized that the rule in Kay has been applied to other areas, including 17 U.S.C. § 505, Rule 11, and 28 U.S.C. § 1927. Elwood at 947. As a result, Elwood has ruled "that Kay imposes a general rule that pro se litigants, attorneys or not, cannot recover statutory attorneys' fees." Id.

The debtor here is an attorney and claims that she spent 47 hours in preparing the instant motion. Even though she is an attorney, though, she is representing herself. The debtor is a pro se litigant. Hence, pursuant to Elwood, she is not entitled to attorney's fees.

In addition, even if the debtor would have been entitled to attorney's fees, she would have been entitled only to reasonable fees. Spending 47 hours in the preparation of the instant motion is hardly reasonable. If the debtor had retained a bankruptcy attorney, that attorney would have likely spent one-tenth of the 47 hours claimed by the debtor. And, that attorney would have charged the same or a lesser hourly rate than the debtor typically charges. In her declaration, she states that her hourly rate in state court matters is \$350 and in federal court is \$250. Bauer Decl. ¶ 31.

The court also notes that it has no evidence of the debtor's time sheets. All the court has is a statement by the debtor that she "spent an ordinarily-unjustifiable 47 hours in preparing this motion." Bauer Decl. ¶ 31. Therefore, even if the debtor would have been entitled to attorney's fees and she had spent less than 47 hours in preparing the motion, the court still does not have sufficient evidence to determine the reasonableness of the debtor's attorney's fees.

Lastly, the court will award punitive damages. NNCU urges the court that no punitive damages are warranted here because NNCU has only approximately 2,700 members and that it handles an average of three bankruptcies annually. NNCU also points to the nominal funds withdrawn from the debtor's NNCU account. The court disagrees.

NNCU sent approximately seven late notices to the debtor post-petition, as late as April 2009. It also sent account statements to the debtor for both January and February 2009. Moreover, the late notices were sent to the debtor even after the debtor filed a motion to avoid NNCU's lien on her vehicle and after NNCU responded to that motion. That motion was filed and served on NNCU on February 20, 2009. See Docket No. 22. NNCU filed an opposition to the lien-avoidance motion on March 9, 2009. See Docket No. 40. Also, the facts in the record suggest that NNCU did not investigate the debtor's allegations of stay violations until after she filed the instant motion. This motion was filed on April 24, but NNCU did not return the funds withdrawn from the debtor's account until May 11. NNCU's actions were, at the least, reckless and without regard to the debtor's bankruptcy rights.

NNCU argues that because it deals with average of only three bankruptcies annually, the court should not award punitive damages. However, even three bankruptcy cases per year should provide NNCU with sufficient experience of knowing how to properly deal with collections from members who are in bankruptcy.

On the other hand, the debtor's compensatory damages were nominal, only \$4.13, NNCU has already returned the improperly withdrawn funds back to the debtor, and NNCU is a small institution, with only approximately 2,700 members. Given

these considerations, the court concludes that punitive damages of \$500 are appropriate. The damages should be paid by NNCU within 10 days of entry of the order on this motion. The motion will be granted in part.

21. 09-34419-A-7 RUDOLPH/MADELINE GUEVARA HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-22-09 [8]

Tentative Ruling: The petition will be dismissed.

The debtors 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 24, 2009. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

22. 09-26222-A-7 CONNIE DEVERS HEARING - MOTION FOR
KAT #2 RELIEF FROM AUTOMATIC STAY
CITIBANK NA, VS. 7-23-09 [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, CitiBank, seeks relief from the automatic stay as to a real property in Antioch, California. The property has a value of \$359,000 and it is encumbered by claims totaling approximately \$821,857. 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 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.

23. 09-34224-A-7 DANIEL DIXON HEARING - MOTION FOR
RFM #1 RELIEF FROM AUTOMATIC STAY
KEYBANK USA NA, VS. 7-24-09 [9]

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

The motion will be granted.

The movant, Keybank U.S.A., seeks relief from the automatic stay with respect to a 2004 Sea Ray boat. The boat has a value of \$105,000 in Schedule B and its secured claim is approximately \$129,521.

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

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

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

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

24. 09-25325-A-7 KEVIN/SAMANTHA COOPER HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK TRUST CO. AMERICAS, VS. 7-23-09 [22]

Tentative Ruling: The motion will be dismissed because the proof of service

does not identify the parties served with the motion. The attachment to the proof of service is missing. Hence, the court is unable to determine the adequacy of the notice.

25. 09-32827-A-7 GILBERT/RASHEEDA FAYETTE HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA N.A., VS. 7-31-09 [15]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in El Dorado Hills, California. The property has a value of \$430,000 and it is encumbered by claims totaling approximately \$485,923. The movant's deed is the only deed against the property, securing a claim of approximately \$477,923.

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

26. 09-30328-A-7 ALICIA MARTELLI

CONT. HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-2-09 [18]

Tentative Ruling: The motion will be granted.

The movant, Federal Home Loan Mortgage Corporation, seeks relief from the automatic stay as to a real property in Roseville, California.

The debtor has filed a response, stating that she cannot negotiate a loan modification until the completion of the instant bankruptcy case. On the other hand, the debtor contends that granting relief from stay is not in her best interest or in the interest of Freddie Mac.

The movant purchased the property at a pre-petition foreclosure sale, on May 11, 2009. The debtor filed the instant petition on May 22, 2009.

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

The court will grant relief from stay also in order to allow the movant to negotiate a loan modification with the debtor.

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

27. 08-31231-A-7 LUCY WHITTIER

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-16-09 [155]

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

This order to show cause was issued because the debtor, after conversion of her case from chapter 11 to chapter 7, failed to file the statement of current monthly income and means test calculation, as required by 11 U.S.C. § 707(b)(2)(C). While this is cause for dismissal, this case began under chapter 11. The statement not filed by the debtor is used principally to determine whether the debtor has the ability to make payments to creditors in a reorganization. The court converted the case to chapter 7 because it concluded that a reorganization was unlikely. Therefore, the case shall remain pending despite the failure of the debtor to file the statement.

28. 09-30133-A-7 JUNE FREDERICK
JKF #1
VS. RANCHO TEHAMA ASSOC.

HEARING - MOTION TO
AVOID NON-JUDICIAL FORECLOSURE
ASSESSMENT LIEN
7-6-09 [21]

Tentative Ruling: The motion will be denied.

The debtor moves to avoid a lien on his real property in Corning, California that resulted from the recording of a Notice of Delinquent Assessment in Tehama County.

However, section 522(f)(1)(A) permits the avoidance only of judicial liens, *i.e.*, liens that are the result of a judgment obtained against the debtor, whose abstract has been recorded in the county where the debtor's property is located. The recorded notice of delinquent assessment here is not a judgment. It is merely a notice of non-payment of homeowner association dues, recorded by the debtor's homeowner association. The lien then is not avoidable pursuant to section 522(f)(1)(A) or any other provision of section 522. The motion will be denied.

29. 09-33036-A-7 GAYLE/JOSEPH MOONEY HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 7-31-09 [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, JP Morgan Chase Bank, seeks relief from the automatic stay as to a real property in Penryn, California. The property has a value of \$400,000 and it is encumbered by claims totaling approximately \$532,727. The movant's deed is in first priority position and secures a claim of approximately \$431,722.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 28, 2009.

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

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

30. 09-34537-A-12L TRAJANO SILVERIA HEARING - MOTION TO
NLE #1 DISMISS
7-22-09 [10]

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

The chapter 12 trustee moves for dismissal because the debtor has not filed his certificate of credit counseling.

Bankruptcy Rule 1007(b)(3) requires an individual debtor to file a statement of compliance with the credit counseling requirement of section 109(h). Section 1208(c) provides that "[o]n request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including-(1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors."

The debtor has not filed a statement of compliance with the credit counseling requirement. As a result, creditors have been unable to determine the debtor's eligibility under section 109(h). The petition was filed on July 14, 2009. The delay in submitting the statement is cause for dismissal as it is unreasonable and is prejudicial to the creditors. Hence, the motion will be granted and the case will be dismissed.

31. 09-27238-A-7 LEVI BOYNTON HEARING - U.S. TRUSTEE'S MOTION
UST #2 TO DISMISS
7-6-09 [16]

Tentative Ruling: The motion will be granted but the case will be converted to chapter 13.

The U.S. Trustee seeks dismissal pursuant to 11 U.S.C. § 707(b)(1), arguing that the presumption of abuse exists under 11 U.S.C. § 707(b)(2)(A) because, with appropriate corrections to the current monthly income in Form B22A, the debtor's monthly disposable income is approximately \$831.91 rather than the negative \$680 reported by the debtor. The \$831.91 amount exceeds the statutory threshold of \$182.50.

The debtor has filed a response, conceding that his calculation of the current monthly income is inaccurate and asserting that the correct current monthly income is \$10,512. The debtor requests the court to convert the case to chapter 13.

Given the U.S. Trustee's calculations and the admission of the debtor that his calculation of the current monthly income is inaccurate, the court will grant the motion. But, as requested by the debtor, the case will be converted to chapter 13.

32. 09-31939-A-7 ROBERT/JOYCE MIGUEL CONT. HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
VANGUARD TITLE TRUST, VS. 7-10-09 [8]

Tentative Ruling: The motion will be granted.

The movant, Vanguard Title Trust, seeks relief from the automatic stay with respect to a leased 2001 Mercedes Benz S500. The outstanding amount under the lease agreement totals \$19,324. The debtor also has not made two pre-petition and one post-petition payments under the lease agreement. These facts make it unlikely that the trustee will attempt to assert any interest in the lease.

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

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

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

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

33. 09-20140-A-7 SHASTA REGIONAL MEDICAL HEARING - TRUSTEE'S MOTION FOR
MPD #3 CENTER, LLC (1) ORDER AUTHORIZING EMPLOYMENT
OF THE TECH GROUP AND (2) ORDER
AUTHORIZING COMPENSATION TO THE
TECH GROUP FROM FUNDS HELD BY
TRUSTEE
7-20-09 [182]

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

The trustee seeks approval to employ and compensate The Tech Group, Inc. He seeks to employ TG to analyze and collect the estate's outstanding receivables. Presently, the receivables are collected by Prime Healthcare Services-Shasta, LLC, the operator of the medical center formerly operated by the debtor. Prime though, has demanded a fee of 10% of the receivables plus \$50,000 per month from the estate, in order to continue collection. The demanded \$50,000 payment allegedly represents a fee Prime has been paying to Perot Data Systems, an entity employed by Prime to collect the receivables.

The trustee proposes to pay \$15,000 per month to TG, 5% of the net funds collected, incurred expenses, including travel, meal and vendor expenses, and an one-time "data dump" fee to Perot for turning over the receivables information to TG. The trustee does not know the amount of "data dump" fee at this time. TG's fee translates into compensation of \$125 per hour. The trustee proposes to pay TG's compensation from funds presently held by the trustee and from the collections of the receivables, pursuant to a compensation application under section 330, administrative expense claim under section 503(b), or surcharge on a secured creditor's claim under section 506(c). The source of funds presently held by the trustee and receivables TG will be

collecting is receivables owed to the debtor.

Medical Properties Trust, Inc. and its affiliates, which has asserted a senior security interest in all of the debtor's receivables, including funds presently held by the trustee, objects to the motion. It argues that the trustee may not pay TG out of MPT's collateral because he has not demonstrated that MPT's interest in the collateral is adequately protected.

The trustee replies that MPT's alleged security interest is subject to a dispute, which will be resolved in the context of the pending adversary proceeding filed by MPT (Adv. Proc. No. 09-2467).

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."

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."

First, the validity, extent and priority of MPT's security interest is not properly before the court in this motion. MPT's security interest is disputed and is the subject of an adversary proceeding pending before the court.

Second, section 363(e), which MPT cites as applicable here, does not apply until MPT prevails on establishing its alleged security interest in the receivables. Section 363(e) applies only when "an entity that has an interest in property used, sold, or leased" makes a request. Also, this is a liquidation proceeding. Assuming MPT prevails in the pending adversary proceeding, section 725 would require the trustee to "dispose of any property in which an entity other than the estate has an interest, such as a lien, and that has not been disposed of under another section of this title," "before final distribution of property of the estate under section 726." This means that if and when MPT prevails in establishing its alleged security interest, the trustee would have to turn to MPT any property that is collateral of MPT's claim, including funds collected from outstanding receivables.

Third, while the instant motion does not indicate how much in receivables TG is expected to collect, Schedule B indicates that the value of the estate's receivables is approximately \$23 million. On the other hand, MPT's claim is approximately \$6 million. See Exhibit 1 to MPT Objection, Stewart Decl. ¶ 17. In other words, assuming MPT has the alleged security interest in the receivables, MPT's claim is fully secured by the receivables.

Fourth, TG is a disinterested person within the meaning of section 327(a) and does not hold an interest adverse to the estate. Martinez Decl. ¶ 6. Even though the court is prepared to approve TG's employment pursuant to section 327(a), the court needs further clarification on some points. The trustee's reply states that TG's proposed compensation is for 160 hours of work, while Mr. Martinez's declaration indicates that TG will provide only 120 hours of work, with a provision for 80 additional hours, if needed. Reply at 5 ln.18; Martinez Decl. ¶ 4. Also, the trustee should provide a comparison of the volume and extent of services between TG and Perot. The record lacks evidence about the volume and extent of services provided by Perot. Lastly, nothing in the motion indicates how much in funds the estate has been collecting on

monthly basis. This figure would help in confirming that the estate would have sufficient funds to pay TG's fees.

Fifth, TG's compensation should be awarded pursuant to section 330(a). Neither section 503(b), nor section 506(c) is proper basis for awarding compensation to TG. Until TG performs services to the estate, the court cannot determine whether TG is entitled to an administrative expense claim. And, as the validity, extent and priority of MPT's security is not properly before the court, a surcharge pursuant to section 506(c) is not properly before the court either because such surcharge requires "an allowed secured claim." 11 U.S.C. § 506(c).

Subject to the clarifications requested above, the court concludes that the proposed compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved. The trustee is allowed to pay TG on monthly basis as requested in the motion. However, TG shall apply at least every six months with the court for interim approval of its compensation, including fees and expenses. TG's last compensation application shall seek approval on final basis of all interim compensation awards.

Finally, in granting this motion and permitting the estate to employ TG, the court recognizes that MPT has not offered a less expensive alternative to the collection of the receivables by TG. Moreover, receivables for medical care services have a relatively short life span. In other words, the timeliness of the collection is vital to maximizing recovery on the receivables. Hence, neither MPT, nor the estate can afford neglecting the collection of the receivables, pending the resolution of the adversary proceeding.

34. 09-34643-A-7 RONALD/SHERYL RAMIREZ HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
BAC HOME LOANS SERVICING, VS. 7-30-09 [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, BAC Home Loans Servicing, seeks relief from the automatic stay as to a real property in Tracy, California. The property has a value of \$147,000 and it is encumbered by claims totaling approximately \$338,511. 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.

35. 09-31044-A-7 YADIRA LAVALLE HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, LLC, VS. 7-21-09 [15]

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

The motion will be granted.

The movant, Aurora Loan Services, seeks relief from the automatic stay as to a real property in Woodland, California. The property has a value of \$130,000 and it is encumbered by claims totaling approximately \$280,435. 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 23, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

36. 09-31445-A-7 DIXON TONG HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
EMC MORTGAGE CORP., VS. 7-24-09 [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, EMC Mortgage Corporation, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$293,000 and it is encumbered by claims totaling approximately \$608,910. The movant's deed is in first priority position and secures a claim of approximately \$527,192.

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

37. 09-33246-A-7 BERNIE/TIA RUSHIN HEARING - MOTION TO
MAA #1 VOLUNTARILY DISMISS CASE
7-28-09 [9]

Tentative Ruling: The motion will be denied.

The debtors seek dismissal of this case on the basis that they erroneously filed two cases. The other case is Case No. 09-33257. Despite the erroneous filing of the two cases, this case will be dismissed because it was the first case filed by the debtor. The debtor must ask that the second case filed be dismissed. To do otherwise would permit judge shopping.

38. 08-34347-A-11 MBD, INC. HEARING - FIRST INTERIM
WCL #17 APPLICATION BY DEBTOR'S COUNSEL
FOR ALLOWANCE AND PAYMENT OF FEES
AND COSTS (\$162,247.50 FEES;
\$3,375.01 EXPENSES)
7-24-09 [341]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor's counsel, 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.

Law Offices of William C. Lewis, attorney for the debtor in possession, has filed its first interim application for approval of compensation. The requested compensation consists of \$162,247.50 in fees and \$3,375.01 in expenses, for a total of \$165,622.51. This application covers the period from October 6, 2008 through May 15, 2009. The court approved the applicant's employment as the debtor's attorney on October 24, 2008. In performing its services, the applicant charged hourly rates of \$325, \$375, and \$475.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and

"reimbursement for actual, necessary expenses." The applicant's services included, without limitation: (1) advising the debtor about compliance with the requirements of a debtor in possession; (2) preparing schedules and statements; (3) assisting in the preparation of operating reports; (4) attending meetings with the U.S. Trustee and providing requested information; (5) preparing employment and compensation applications; (6) assisting the debtor in the resolution of a dispute within the debtor's real estate broker firm; (7) negotiating and securing agreements for the use of cash collateral; (8) collecting information for and preparing a plan and disclosure statement; (9) prosecuting an opposition to relief from stay motion(s); (10) advising the debtor about the sale of its properties; (11) preparing the necessary pleadings for and prosecuting motions for the sale of the debtor's properties; and (12) assisting the debtor in the resolution of mechanic lien disputes.

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

39. 09-27349-A-7 KENNETH/SHIRLEY BAKER HEARING - MOTION TO
PLG #1 STRIKE DUPLICATE FILING
7-10-09 [20]

Tentative Ruling: The motion will be granted.

The debtors seek dismissal of this case on the basis that they erroneously filed two cases. The other case is Case No. 09-27330. Given the erroneous filing of the two cases, this case (Case No. 09-27349) will be dismissed. No other relief will be granted.

40. 09-32849-A-7 DARRELL/ALMA BURRELL CONT. HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER SVCS., 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.

41. 09-34051-A-7 CARL/MEEGAN TORO HEARING - MOTION FOR
ND #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 7-27-09 [7]

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

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Nevada City, California. The statement of financial affairs states that the property was foreclosed or surrendered pre-petition, in June 2009. This is cause for the granting of relief from stay as to the debtor only.

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

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

As to the estate, the analysis is different. The trustee has not issued a report from the initial meeting of creditors. The movant asserts that the property has a value of \$185,000 pursuant to a broker property analysis. But, the analysis is inadmissible because it lacks foundation, it is hearsay, and is not authenticated by a declaration or an affidavit by the individual who prepared it, Chuck Kastenzholz. See Fed. R. Evid. 802, 901(a). Further, while the debtor has listed the property in item 5 of the statement of financial affairs, the debtor has listed no value for the property. The property is not listed in the schedules either. The court then has no admissible evidence of value for the property. As a result, the court cannot determine whether there is any equity in the property or whether the movant's interest in it is adequately protected. Accordingly, the motion will be denied as to the estate.

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

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

however, shall run concurrently with the 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. 09-21552-A-7 MARSHALL/MARY ROSE CONT. HEARING - MOTION FOR
ADS #1 REDEMPTION OF PERSONAL PROPERTY
4-29-09 [23]

Tentative Ruling: The motion will be granted.

The debtor seeks to redeem a 1995 Infinity J30 in a fair condition. The debtor has submitted a declaration of Colby Sandman, who is a licensed and bonded car dealer. The declaration states that the vehicle's retail value, assuming excellent condition, is \$2,500. According to Mr. Sandman, his cost of reconditioning the vehicle would be \$1,500. Sandman Decl. ¶ 4.

Pursuant to 11 U.S.C. § 722 the debtor is allowed to redeem tangible personal property intended for personal use from a lien securing a dischargeable consumer debt if the property was exempted under 11 U.S.C. § 522. The value of this secured claim is \$4,855.

The motion will be granted. The sum of \$1,000 shall be tendered within 15 days of entry of the order.

43. 09-21552-A-7 MARSHALL/MARY ROSE CONT. HEARING - MOTION FOR
ADS #2 REDEMPTION OF PERSONAL PROPERTY
4-29-09 [28]

Tentative Ruling: The motion will be granted.

The debtor seeks to redeem a 2003 Chevrolet Trailblazer. The debtor has submitted a declaration of Colby Sandman, who is a licensed and bonded car dealer. See Docket No. 83 (wrong docket control number). The declaration states that the vehicle's retail value, assuming excellent condition, is \$5,000. According to Mr. Sandman, his cost of reconditioning the vehicle would be \$1,000. Sandman Decl. ¶ 4.

Pursuant to 11 U.S.C. § 722 the debtor is allowed to redeem tangible personal property intended for personal use from a lien securing a dischargeable consumer debt if the property was exempted under 11 U.S.C. § 522. The value of this secured claim is \$4,855.

The motion will be granted. The sum of \$4,000 shall be tendered within 15 days of entry of the order.

44. 09-21552-A-7 MARSHALL/MARY ROSE CONT. HEARING - MOTION FOR
ADS #3 REDEMPTION OF PERSONAL PROPERTY
4-29-09 [32]

Tentative Ruling: The motion will be granted.

The debtor seeks to redeem a 1999 Mazda Protégé. The debtor has submitted a declaration of Colby Sandman, who is a licensed and bonded car dealer. See Docket No. 81 (wrong docket control number). The declaration states that the vehicle's retail value, assuming excellent condition, is \$2,000. According to Mr. Sandman, his cost of reconditioning the vehicle would be \$1,500. Sandman Decl. ¶ 4.

Pursuant to 11 U.S.C. § 722 the debtor is allowed to redeem tangible personal property intended for personal use from a lien securing a dischargeable consumer debt if the property was exempted under 11 U.S.C. § 522. The value of this secured claim is \$4,855.

The motion will be granted. The sum of \$500 shall be tendered within 15 days of entry of the order.

45. 09-30152-A-7 JANELLE JENKINS-REHN HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A., VS. 7-28-09 [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, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in South Lake Tahoe, California. The property has a value of \$350,000 and it is encumbered by claims totaling approximately \$368,537. The movant's deed is in first priority position and secures a claim of approximately \$329,253.

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

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

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

46. 09-32052-A-7 ANUL RAM HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
ONEWEST BANK, FSB, VS. 7-29-09 [12]

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

The motion will be granted.

The movant, One West Bank, seeks relief from the automatic stay as to a real property in North Highlands, California. The property has a value of \$149,000 and it is encumbered by claims totaling approximately \$329,236. 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 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.

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

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

47. 09-32153-A-7 PEGGY BOLING HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A., VS. 7-29-09 [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, JP Morgan Chase Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The schedules identify the location of the property as Rancho Cordova, California. The property has a value of \$90,000 and it is encumbered by claims totaling approximately \$219,818. The movant's deed is in second priority position and secures a claim of approximately \$50,297.

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

48. 09-32153-A-7 PEGGY BOLING HEARING - MOTION FOR
KAT #2 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 7-31-09 [23]

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

The motion will be granted.

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay as to a real property in Gold River, California. The property has a value of \$375,000 and it is encumbered by claims totaling approximately \$535,100. The movant's deed is in second priority position and secures a claim of approximately \$98,993.

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

49. 09-26854-A-7 DAVID/TRACY PIKE HEARING - MOTION FOR
LAZ #1 RELIEF FROM AUTOMATIC STAY
CITIMORTGAGE, INC., VS. 7-27-09 [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 in part and dismissed in part.

The movant, CitiMortgage, Inc., seeks relief from the automatic stay as to a real property in Citrus Heights, California.

Given the entry of the debtor's discharge on July 27, 2009, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of \$143,000 and it is encumbered by claims totaling approximately \$237,800. 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 21, 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.

50. 09-29254-A-12L IRA/JOAN DILWORTH HEARING - MOTION TO
NLE #1 DISMISS
6-29-09 [21]

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

The chapter 12 trustee moves for dismissal due to the debtors' failure to appear at the meeting of creditors, the debtors' delay in filing a statement of social security number, and the debtors' failure to file an attorney's disclosure statement, statement of financial affairs, schedules A through J and a summary of schedules.

Creditor The Money Brokers, Inc. joins in the trustee's dismissal motion. TMB's supporting declaration states that the debtors did not appear at two creditors' meetings, on June 18 and July 23. At the last creditors' meeting, the debtor's counsel advised the trustee and TMB that he had lost contact with the debtors. Thomas Glasheen Decl. ¶¶ 7, 9.

Section 1208(c) provides that "[o]n request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including-(1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors."

Although the debtors have filed their schedules A through J, attorney's disclosure statement, statement of financial affairs, and summary of schedules, the debtors' failure to attend two creditors' meetings constitutes unreasonable delay that is prejudicial to creditors. The court also notes that the minutes from the June 18 creditors' meeting state that the debtors' attorney "will not file a plan." The above is cause for dismissal pursuant to section 1208(c)(1). The motion will be granted and the case will be dismissed.

51. 09-27255-A-7 RICHARD DAVIS HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, LLC, VS. 7-24-09 [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 Yuba City, California. The property has a value of \$200,000 and it is encumbered by claims totaling approximately \$218,834. See Statement of Financial Affairs item 5. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on May 28, 2009.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. 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. 09-30255-A-7 MANUEL/EVANGELINA RAMOS HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
ONE WEST BANK, FSB, VS. 7-23-09 [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, One West Bank, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$159,500 and it is encumbered by claims totaling approximately \$296,818. The movant's deed is in first priority position and secures a claim of approximately \$273,023.

The court concludes that there is no equity in the property 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 7, 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.

53. 09-32056-A-7 FRANCISCO/CYNTHIA GUTIERREZ HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
ONE WEST BANK FSB, VS. 7-22-09 [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, One West Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$215,000 and it is encumbered by claims totaling approximately \$352,658. The movant's deed is in first priority position and secures a claim of approximately \$286,826.

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

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

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

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

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

54. 08-39357-A-7 JERALD/JOYCE BENNETT HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK N.A., VS. 7-27-09 [15]

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

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

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

Given the entry of the debtor's discharge on May 4, 2009, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of \$293,000 and it is encumbered by claims totaling approximately \$361,604. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

55. 09-32858-A-7 OWEN STOTT HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 7-29-09 [14]

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

The motion will be granted.

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

value of \$248,500 and it is encumbered by claims totaling approximately \$497,883. The movant's deed is in first priority position and secures a claim of approximately \$403,547.

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

56. 07-29563-A-11 442 NORTH SUTTER STREET LLP HEARING - MOTION FOR
08-2157 JMQ #3 JUDGMENT ON THE PLEADINGS
442 NORTH SUTTER STREET LLP, VS. 2-19-09 [71]
SAN JOAQUIN COUNTY

Tentative Ruling: The motion will be granted.

Defendant City of Stockton moves for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), arguing that the claims in the complaint are barred by the doctrine of claim preclusion. This is based on a prior case filed in the district court in 2004 by Warren C.T. Wong, individually and as trustee of the Wong Family Trust Dated February 26, 1981, against the City and other defendants. That case was dismissed with prejudice due to a finding of "continued lack of prosecution by plaintiff and the representations that plaintiff intended to file a dismissal in any event." See Docket 45, Exhibit C at p. 3; see also Docket 45, Exhibit D at p. 2.

The plaintiff, 442 North Sutter Street LLP, the debtor in the bankruptcy case, opposes the motion, arguing that res judicata does not apply and, even if it applies, the City's lien is nonetheless void.

Both the prior and instant litigation concern the demolition by the City of a building in Stockton, California. At the time of the demolition, the building was owned by the trust. The City assessed demolition fees and penalties, and fines for code violations relating to the real property. Based on the assessments, the City placed a lien against the property. In 2004, Mr. Wong

filed a lawsuit in district court against the City and other defendants, alleging that the demolition violated his constitutional rights and seeking to remove the lien. That action was dismissed with prejudice.

The City transferred the lien to San Joaquin County, which added other debt to the lien. At this time, the County's lien secures a claim of \$710,199.52.

In October 2007, the plaintiff was formed and it purchased the property in question from the trust. The plaintiff filed the underlying bankruptcy case on November 9, 2007. It filed the instant action against the County on March 26, 2008. The City intervened as a defendant in June 2008.

This motion was filed in February 2009. Its filing prompted the plaintiff to file a motion with the district court seeking a determination that the prior action was not dismissed with prejudice. The district court, Magistrate Judge Mueller presiding, heard the motion in March 2009. This court delayed ruling on the instant motion until Judge Mueller issued her decision. It was issued in April 2009. Judge Mueller denied the motion, but the plaintiff objected to her findings and recommendations. District Judge Mendez adopted Judge Mueller's findings and recommendations in July 2009.

Fed. R. Civ. P. 12(c) provides that "[a]fter the pleadings are closed - but early enough not to delay trial - a party may move for judgment on the pleadings." The standard for judgment on the pleadings is the same as that of a motion to dismiss. New.Net, Inc. v. Lavasoft, 356 F. Supp. 2d 1090, 1115 (C.D. Cal. 2004). Dismissal is proper only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of its claim which would entitle him to relief. Id. The court must construe the complaint, and resolve all doubts, in the light most favorable to the plaintiff. Id. Even though the court must accept all material allegations in the complaint as true, the court need not accept as true conclusory allegations or legal characterizations. Id.

Res judicata or claim preclusion bars the litigation in a subsequent action of any claims that were raised or could have been raised in the prior action. Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 713 (9th Cir. 2001) (citing Western Radio Servs. Co. v. Glickman, 123 F.3d 1189, 1192 (9th Cir. 1997)). In order for res judicata to apply, three elements must be met (1) identity of claims, (2) final judgment on the merits, and (3) privity between the parties. Headwaters, Inc. v. United States Forest Serv., 399 F.3d 1047, 1052 (9th Cir. 2005). Involuntary dismissal under Rule 41(b), including dismissal with prejudice for failure of prosecution, is final judgment on the merits for purposes of res judicata. Owens at 714.

In determining identity of claims, courts consider four factors: (i) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (ii) whether substantially the same evidence is presented in the two actions; (iii) whether the two suits involve infringement of the same right; and (iv) whether the two suits arise out of the same transaction or nucleus of facts. Rein v. Providian Fin. Corp., 270 F.3d 895, 903 (9th Cir. 2001); see also Associates v. Reed (In re California Litfunding), 360 B.R. 310, 322 (Bankr. C.D. Cal. 2007). "The central criterion in determining whether there is an identity of claims between the first and second adjudications is 'whether the two suits arise out of the same transactional nucleus of facts.'" Owens at 714 (quoting Frank v. United Airlines, Inc., 216 F.3d 845, 851 (9th Cir. 2000)).

In determining privity between the parties, courts look to whether there is a

substantial identity between the parties or whether sufficient commonality of interest exists between the parties. Tahoe Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 322 F.3d 1064, 1082 (9th Cir. 2003). Federal courts have deemed some relationships "sufficiently close" to warrant a conclusion of privity. "[A] non-party who has succeeded to a party's interest in property is bound by any prior judgment against the party." "[A] non-party who controlled the original suit will be bound by the resulting judgment." "[A] non-party whose interests were represented adequately by a party in the original suit" will be bound. United States v. Schimmels (In re Schimmels), 127 F.3d 875, 881 (9th Cir. 1997). "[A] relationship of privity can be said to exist when there is an 'express or implied legal relationship by which parties to the first suit are accountable to non-parties who file a subsequent suit with identical issues.'" Id. (quoting United States v. ITT Rayonier, Inc., 627 F.2d 996, 1003 (9th Cir. 1980)).

Turning to the identity of claims prong, the court does not have in the record the complaint Mr. Wong filed in the 2004 district court litigation. Nonetheless, the plaintiff admits that the claims in that complaint included 42 U.S.C. § 1983 civil rights and inverse condemnation claims. See Opposition at p. 6. The complaint also included allegations that the defendants had filed and recorded improper liens against the property. See Docket No. 75, Exhibit B to Motion at 3. Mr. Wong argued that the defendant had improperly demolished the property and recorded liens without affording him due process of law and just compensation. See Docket No. 75, Exhibit B to Motion at p. 2-3.

The instant action contains four claims. The first claim challenges the \$710,199.52 lien against the real property, originally recorded by the City and later transferred to the County. The second claim seeks a declaration that any debt owed to the City or the County, other than debt for ad valorem taxes, is a "general unsecured debt . . . assumed by [the plaintiff] as part of its purchase of the Property, and subject to and dischargeable under an approved Plan."

The third claim challenges the legality of the abatement proceedings and requests the court to reduce the City's assessments for violations and the demolition of the building to \$1,000, and to avoid the lien on the property. It alleges that the demolition violated the Due Process and Equal Protection clauses in the Fifth Amendment of the United States Constitution, Article 1, Sec. 7 of the California Constitution, and Cal. Health & Safety Code §§ 17910-17998.3.

The fourth claim asks the court to bifurcate the lien held by the County into two portions, one portion representing the debt owed to the City before it transferred the lien to the County and the other portion representing debt owed to the County. It requests the court to avoid the portion of the lien representing debt owed to the City.

As in the prior litigation, the instant action challenges the legality of the demolition and challenges the lien placed on the property. Both lawsuits involve the alleged infringement of the same rights, namely the unlawful taking of property, improper assessments, and improper assertion of liens. The plaintiff is seeking the same relief as sought in the prior action, *i.e.*, the removal of the lien placed by the City. And, both suits arise from the same nucleus of facts, including the demolition of the building on the property, the assessments for violations and the demolition, and the placement of the City's lien on the property.

Additionally, the district court dismissed the prior action with prejudice as to all defendants. "The entire action was dismissed with prejudice . . . [d]ismissal was entered as against all plaintiffs and the position of the plaintiff trust in this regard is meritless." See District Court Docket No. 89, Exhibit B at 1. Prosecution of this action, then, would impair the City's rights under the terms of the district court judgment. That is, if this new case is not dismissed, the City would be compelled to litigate the same claims previously dismissed by the district court.

Also, to the extent the claims for relief in the instant action are different than the claims in the prior action, such claims could have been raised in the prior action because all claims arise from the same nucleus of facts. For instance, claim two in this action raises issues of dischargeability, which do not appear to have been raised in the prior action. This claim, although involving a different legal basis, is premised on the same nucleus of facts, the demolition, the assessments, and the lien.

The plaintiff argues that the inverse condemnation claim was not ripe for adjudication in the prior action and, as a result, the district court did not have subject matter jurisdiction over it. This argument fails because it has been rejected already by Judge Mueller in the prior action.

In her April 15, 2009 findings and recommendations on the motion, Judge Mueller stated: "Plaintiff trust also contends this court did not have jurisdiction over the subject matter of the trust's federal claims because of failure to exhaust a claim of regulatory taking. That contention is meritless in light of plaintiff's position taken in state court, and upheld by the State Court of Appeals [*sic*], that the City's actions constituted a physical taking. There is no basis for reopening this case." See Docket No. 89, Exhibit B at p. 1.

Only regulatory takings are subject to the ripeness defense of exhausting state court remedies. West Linn Corporate Park L.L.C. v. City of West Linn, 534 F.3d 1091, 1100 (9th Cir. 2008). The prior action did not involve a regulatory taking. Rather, it involved a physical taking.

Also, a court has jurisdiction to determine its subject matter jurisdiction. And, if it determines that it has, or acts on the premise that it has subject matter jurisdiction, its judgment is binding. If that judgment is incorrect, a party must appeal it; the party may not collaterally attack the judgment by filing a new action.

Judge Mueller's judgment dismissing the prior action is final judgment on the merits as the dismissal was with prejudice. Owens, 244 F.3d at p. 714. "The entire action was dismissed with prejudice." See Docket No. 89, Exhibit B at p. 1. Judge Mueller's recommendation for dismissal of the district court action was made on October 29, 2004 and the district court adopted that recommendation on December 21, 2004 and dismissed the action. See Docket 45, Exhibit C at p. 3; see also Docket 45, Exhibit D at p. 2.

The plaintiff in this action and the plaintiff in the prior action, the trust, are in privity for purposes of claim preclusion.

In October 2007, the trust sold the property in question to the plaintiff. See Case No. 07-29563, Docket No. 20, Statement of Financial Affairs at p. 1. More importantly, the sole equity holder of the plaintiff debtor is the trust. See Case No. 07-29563, Docket No. 18, List of Equity Security Holders. Warren Wong, the person who prosecuted the prior action on behalf of the trust, is the

president of the plaintiff. See Case No. 07-29563, Docket No. 1, Voluntary Petition at p. 3. And, the plaintiff was formed in October 2007, only one month before filing for bankruptcy on November 9, 2007. See Case No. 07-29563, Docket No. 20, Statement of Financial Affairs at p. 1.

The trust and the plaintiff have an express legal relationship by virtue of the plaintiff's purchase of the property from the trust. This relationship makes the trust as seller accountable to the plaintiff as buyer for the dismissal with prejudice for failure to prosecute of the prior action. This is a basis for privity between those parties.

The plaintiff's argument that no privity exists because Warren Wong could not have represented the trust in the prior action fails. Mr. Wong had standing to represent the trust because he had a beneficial interest in the trust. Judge Mueller's findings and recommendations state that "[a]ll documents filed by plaintiff in this action were always filed on behalf of both plaintiff Warren Wong, individually and as trustee of the Wong Family Trust. Defendants now have submitted a copy of the trust document. Plaintiff was the beneficial owner of the trust property and accordingly can be considered to have been litigating his own case personally within the meaning of 28 U.S.C. section 1654." See Docket No. 89, Exhibit B at p. 2. In support of this, Judge Mueller cites Maisano v. Welcher, 940 F.2d 499, 501 (9th Cir. 1991), which holds that parties with beneficial interest in a trust, who appear without an attorney, have standing to represent the trust.

It is a fair inference from the creation of the plaintiff's corporate existence after the dismissal of the district court action and just a month prior to the filing of the bankruptcy petition, from the fact that Warren Wong is a trustee and a primary beneficiary of the trust, and from the fact that the trust owns the equity in the plaintiff, that the plaintiff was created for the sole purpose of filing a chapter 11 petition and with an eye toward re-litigating the district court action in the bankruptcy case. Under these circumstances, it is entirely appropriate and fair that the debtor/plaintiff is saddled with the outcome of the district court litigation initiated by Warren Wong. After all, Mr. Wong is ultimately the beneficiary of the litigation by virtue of his interest in the trust and, through the trust, in the debtor/plaintiff.

The court concludes based on the foregoing that claim preclusion is applicable. The prior action bars the re-litigation by the plaintiff of any claims against the City which were actually litigated or could have been litigated, involving the demolition, resulting assessments, or lien the City placed on the property.

The court also rejects the argument that the City's lien is void because the City failed to assert a compulsory counterclaim to establish such lien in the district court action. The lien was already in place against the property by the time the prior litigation started. Even though the plaintiff has not produced the complaint filed by the trust in the prior action, the City's exhibits show that Mr. Wong had alleged that the City had filed and recorded improper liens against the property. See Docket No. 75, Exhibit B to Motion at p. 3. The City then did not have to plead the lien as a counterclaim in its answer in order to preserve the validity of the lien. The lien was already in place. It was a lien put in place by virtue of a statute; its existence was not dependent on a judicial determination.

As a final note, this ruling applies only to the City and its portion of the lien now held by the County. The ruling does not apply to the remainder of the action, relating to taxes and other debt owed to the County. Also, the ruling

does not apply to any debt other than the lien placed by the City on the property in question. While the record does not reflect any unsecured debt owed to the City, the plaintiff's complaint alludes to priority unsecured tax obligations. See Complaint at p. 7, ln. 10-11.

57. 09-30663-A-7 CARMEN CORTES HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-20-09 [14]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to attend a meeting of creditors scheduled for and held on July 17, 2009. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

58. 09-31967-A-7 JUSTIN/JESSICA ELSEY HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 7-23-09 [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, JP Morgan Chase Bank, seeks relief from the automatic stay as to a real property in Antelope, California. The property has a value of \$210,500 and it is encumbered by claims totaling approximately \$359,946. The movant's deed is in first priority position and secures a claim of approximately \$321,801.

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

59. 09-32667-A-7 DAVID BROWN
KAT #1
NATIONAL CITY MORTGAGE, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-3-09 [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, National City Mortgage, seeks relief from the automatic stay as to a real property in Lodi, California. The property has a value of \$229,000 and it is encumbered by claims totaling approximately \$334,494. 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 \$299,806.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on August 3, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

60. 09-32068-A-7 BRADLEY MEYER HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
ONE WEST BANK, FSB, VS. 7-22-09 [12]

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

The motion will be granted.

The movant, One West Bank, seeks relief from the automatic stay as to a real property in Citrus Heights, California. The property has a value of \$150,000 and it is encumbered by claims totaling approximately \$203,259. The movant's deed is in first priority position and secures a claim of approximately \$158,424.

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

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

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

61. 09-32068-A-7 BRADLEY MEYER HEARING - MOTION FOR
KAT #2 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, LLC, VS. 7-27-09 [24]

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

The motion will be granted.

The movant, Aurora Loan Services, seeks relief from the automatic stay as to a real property in Canton, Mississippi. The property has a value of \$45,000 and it is encumbered by claims totaling approximately \$96,464. The movant's deed is the only deed against the property, securing a claim of approximately \$94,928.

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

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

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 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. 09-26670-A-7 PATRICK BRITTON HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, LLC, VS. 7-21-09 [15]

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

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

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

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

Given the entry of the debtor's discharge on July 20, 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 \$443,811. The movant's deed is in first priority position and secures a claim of approximately \$340,441.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on May 18, 2009.

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.

63. 09-30170-A-7 BRANDAN CRAIG HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, LLC, VS. 7-24-09 [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 Auburn, California. The property has a value of \$60,000 and it is encumbered by claims totaling approximately \$166,954. The movant's deed is in first priority position and secures a claim of approximately \$134,954.

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

64. 09-32872-A-7 GLENWAY/AQUILINA PACARRO HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
BAC HOME LOANS SERVICING, LP, VS. 7-30-09 [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, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$135,000 and it is encumbered by claims totaling approximately \$309,714. The movant's deed is in first priority position and secures a claim of approximately \$258,214.

The court concludes that there is no equity in the property 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 29, 2009.

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

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

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

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

65. 09-27378-A-7 MARTIN/CARRIE RAY HEARING - MOTION FOR
LAZ #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 7-26-09 [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, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Auburn, California. The property has a value of \$350,000 and it is encumbered by claims totaling approximately \$557,800. The movant's deed is in first priority position and secures a claim of approximately \$461,800.

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

66. 09-30679-A-7 KENNETH BERRY HEARING - MOTION TO
MTM #1 AVOID LIEN
VS. DANIELA LUNGU 6-26-09 [14]

Tentative Ruling: The motion will be denied.

The debtor moves to avoid a judicial lien on his real property held by Daniela Lungu.

However, while the motion refers to a judgment and an abstract of judgment recorded in Amador County on August 14, 2008, neither the supporting declaration, nor the exhibits to the motion support this factual assertion. Nothing in the supporting declaration or the exhibits to the motion indicates that a judgment was entered in favor of Daniela Lungu and that an abstract of judgment has been recorded. The court also notes that the motion does not state the amount of the judgment obtained by Daniela Lungu.

Further, the motion would be denied even if the evidentiary deficiencies are cured.

A debtor's right to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. In re Chiu, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000).

tentative ruling.

The motion will be granted.

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$238,000 and it is encumbered by claims totaling approximately \$387,122. 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 22, 2009.

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

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

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

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

69. 09-33783-A-7 RANDALL/KRISTINE SHEPARD HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 7-23-09 [7]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Cottonwood, California. The property has a value of \$244,568 and

it is encumbered by claims totaling approximately \$450,042. The movant's deed is in first priority position and secures a claim of approximately \$405,110.

The court concludes that there is no equity in the property 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 29, 2009.

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

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

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

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

70. 08-33684-A-7 JOHN/JULIE DAVIS HEARING - MOTION FOR
SPB #2 RECONSIDERATION OF RULING
7-15-09 [75]

Tentative Ruling: The motion will be denied.

Counsel for the debtors, Stanley Berman, moves for reconsideration of this court's July 8, 2009 order granting the U.S. Trustee's motion for disgorgement of fees and for sanctions against him. Mr. Berman argues that while the court's ruling granting the motion states that no opposition had been filed to the motion, opposition was filed on June 22, 2009.

The U.S. Trustee opposes the motion, contending that even though Mr. Berman did file opposition to the motion on June 22, that opposition was untimely. It was due on June 8.

The court agrees with the U.S. Trustee. The U.S. Trustee filed her original motion for sanctions on May 7, scheduling it for hearing on June 22. See Docket Nos. 59 & 60. On May 20, the U.S. Trustee filed an amended motion for disgorgement, again scheduling it for a hearing on June 22. See Docket Nos. 64 & 65. The notices of hearing for both the original and amended motions unequivocally state that oppositions were due on or before June 8. See Docket Nos. 60 & 65. Yet, the docket reflects no response from Mr. Berman until June 22. On June 22, Mr. Berman filed two declarations in opposition to the amended motion. On the same day, June 22, the court presided over the initial hearing on the U.S. Trustee's amended motion. Docket No. 71. The court continued the hearing on the amended motion to July 6. But, nothing in the record indicates

that the court retroactively extended the deadline for filing opposition to the amended motion. The original deadline of June 8 remained the deadline for opposition.

The court will amend its ruling of July 6, granting the U.S. Trustee's amended motion for disgorgement, to indicate that Mr. Berman filed an untimely opposition to the motion.

71. 09-33086-A-7 JOHN FALLGREN HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 7-22-09 [15]

Tentative Ruling: The motion will be denied.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Folsom, California. The property has a value of \$434,000 and is encumbered by claims totaling approximately \$419,002. The movant's deed is in first priority position, securing a claim of approximately \$401,347. This leaves approximately \$14,997 of equity in the property.

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

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

The movant also has an equity cushion of approximately \$32,653. This equity cushion is sufficient to adequately protect the movant's interest in the property until the debtors obtain their discharge or the case is closed without entry of a discharge. See 11 U.S.C. § 362(c)(1) & (c)(2). At that point, the automatic stay will expire as a matter of law. The debtor is scheduled to obtain a discharge soon after October 5, 2009. Thus, relief from stay under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied.

The parties shall bear their own fees and costs.

72. 09-33687-A-7 MOVA EASLEY HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-21-09 [9]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to file the statement of current monthly income and means test calculation, schedules A through J, the statement of financial affairs, the statistical summary, and the summary of schedules, as required by Bankruptcy Rule 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).

73. 09-30289-A-7 NICOLE CHAMBERS HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
GMAC, VS. 7-29-09 [10]

Tentative Ruling: The motion will be dismissed as moot.

The movant, GMAC, seeks relief from the automatic stay with respect to a 2008 Chevrolet Silverado.

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

The petition here was filed on May 22, 2009 and a meeting of creditors was first convened on July 1, 2009. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than June 21. The debtor filed a statement of intention on the petition date, but did not list the vehicle in it.

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

Here, although the debtor filed a statement of intention on the petition date, the vehicle is not listed in it. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on June 21, 2009, 30 days after the petition date.

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

The trustee in this case has filed no such motion and the time to do so has expired.

Therefore, without this motion being filed, the automatic stay terminated on June 21, 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.

74. 09-31689-A-7 ROBERT/RENEE BODMAN HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 7-22-09 [11]

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

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Truckee, California. The property has a value of \$950,000 and it is encumbered by claims totaling approximately \$1,035,756. 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 15, 2009.

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

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

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

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

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

75. 09-26390-A-7 BRIAN/SHERI EDWARDS HEARING - MOTION FOR
KAT #2 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK N.A., VS. 7-28-09 [23]

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

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Oroville, California. The property has a value of \$200,000 and it is encumbered by claims totaling approximately \$203,054. 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 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.

76. 09-33392-A-7 ELENA/ANTHONY BOCHENE
KAT #1
JP MORGAN CHASE BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-22-09 [7]

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

The motion will be granted.

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay as to a real property in Grass Valley, California. The property has a value of \$350,000 and it is encumbered by claims totaling approximately \$478,999. The movant's deed is in first priority position and secures a claim of approximately \$315,999.

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

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

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

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

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

recovering any fees and costs incurred in connection with the prosecution of the motion.

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

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

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

77. 09-34892-A-7 ALFREDO/ERICA DIAZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-24-09 [7]

Tentative Ruling: The petition will be dismissed.

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

78. 09-34892-A-7 ALFREDO/ERICA DIAZ HEARING - MOTION FOR
BSN #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 7-31-09 [11]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay with respect to a 2003 BMW 745. The movant has produced evidence that the vehicle has a value of approximately \$20,450 and its secured claim is approximately \$30,151.

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

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

79. 09-28094-A-7 PAMELA RAKE HEARING - MOTION FOR
KH #1 RELIEF FROM AUTOMATIC STAY
BAC HOME LOANS SERVICING, L.P., VS. 7-27-09 [23]

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

The motion will be granted.

The movant, BAC Home Loans Servicing, seeks relief from the automatic stay as to areal property in Sacramento, California. The property has a value of \$135,000 and it is encumbered by claims totaling approximately \$300,879. The movant's deed is in first priority position and secures a claim of approximately \$259,247.

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

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

The court determines that this bankruptcy proceeding has been finalized for

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 July 17, 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 10, 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.

81. 09-27299-A-7 JEFFREY/SHANNON JOHNSON HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-16-09 [20]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because both debtors failed to attend a meeting of creditors scheduled for and held on May 27, 2009. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

82. 09-30699-A-7 VICKI DIXON HEARING - DEBTOR'S MOTION TO
SCA #2 CONVERT CASE FROM CHAPTER 7 TO
CHAPTER 13
7-23-09 [19]

Tentative Ruling: The movant has provided only 25 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, which is consistent with notice given pursuant to Local Bankruptcy Rule 9014-1(f)(1). Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

83. 09-33999-A-7 RONALD/MARIA LAOSANTOS HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 7-29-09 [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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$281,000 and it is encumbered by claims totaling approximately \$595,173. The movant's deed is in first priority position and secures a claim of approximately \$478,133.

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

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

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

84. 09-32904-A-7 STEVEN ALBINI AND HEARING - MOTION FOR
PD #1 SANDRA ISH RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A., VS. 7-17-09 [8]

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

The motion will be granted.

The movant, U.S. Bank, seeks relief from the automatic stay as to a real property in Vallejo, California. The property has a value of \$150,000 and it is encumbered by claims totaling approximately \$409,334. The movant's deed is in first priority position and secures a claim of approximately \$330,667.

The court concludes that there is no equity in the property 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 August 4, 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.

85. 06-24406-A-11 MARSHALL/CAROL WORLEY HEARING - MOTION TO
DKC #12 DISMISS CHAPTER 11 CASE
7-31-09 [210]

Final Ruling: The motion will be dismissed without prejudice. A motion to dismiss a chapter 11 case requires 20 days of notice of the hearing on the dismissal motion. See Fed. R. Bankr. P. 2002(a)(4). The motion was served on July 31, 2009, only 17 days before the hearing. While Local Bankruptcy Rule 9014-1(f)(2) permits motions to be set on as little as 14 days of notice, that local rule also specifies that such notice is permissible "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ."

86. 09-32306-A-7 HERBERT/JENNIFER NEVES HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 7-15-09 [8]

Final Ruling: The motion will be dismissed without prejudice. The certificate of service does not identify the parties served with the motion. The attachment to the certificate is missing. Hence, there is no proof of proper service. Service is deficient.

87. 09-32007-A-7 CHRISTINA JOHNSON HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AMERICAN HOME MTG. SVCING., INC., VS. 7-14-09 [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, American Home Mortgage Servicing, Inc., seeks relief from the automatic stay as to a real property in Yuba City, California. The property has a value of \$155,000 and it is encumbered by claims totaling approximately \$211,671. The movant's deed is in first priority position and secures a claim of approximately \$171,016.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 21, 2009.

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and

its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

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

88. 09-30908-A-7 MICHELLE WILDE HEARING - MOTION FOR
WFZ #1 RELIEF FROM AUTOMATIC STAY
ONE WEST BANK, FSB, VS. 7-16-09 [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, One West Bank, seeks relief from the automatic stay as to a real property in Folsom, California. The property has a value of \$765,500 and it is encumbered by claims totaling approximately \$1,094,152. The movant's deed is in first priority position and secures a claim of approximately \$850,292.

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

89. 09-31309-A-7 LINDA SHONDE
PD #1
BANK OF AMERICA, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-9-09 [10]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Sacramento, California. In the schedules, the location of the property is identified as Elk Grove, California. The property has a value of \$189,000 and it is encumbered by claims totaling approximately \$395,273. The movant's deed is in first priority position and secures a claim of approximately \$320,295.

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

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

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

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

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

90. 09-26701-A-7 HARVEY/OANH TRAN
SAK #2

HEARING - MOTION TO
DISMISS CASE
7-10-09 [14]

Final Ruling: The motion will be dismissed without prejudice because the amended notice of hearing, rescheduling the hearing on the motion from August 27 to August 17, was not filed and served until August 4, only 13 days before the August 17 hearing. This violates Local Bankruptcy Rule 9014-1(f)(2), which requires at least 14 days' notice of the hearing on the motion. Also, the debtor has not obtained an order shortening the time for notice of this motion. See Local Bankruptcy Rule 9014-1(f)(3). Hence, notice was deficient.

91. 09-30601-A-7 JACQUELYN SMITH
DMM #1
WACHOVIA MORTGAGE, FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-20-09 [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, Wachovia Mortgage, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$165,000 and it is encumbered by claims totaling approximately \$300,036. 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 6, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

92. 09-32901-A-7 CARLOS/NANCY AREVALO HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, VS. 7-24-09 [25]

Final Ruling: The motion will be dismissed without prejudice. The certificate of service does not identify the parties served with the motion. The attachment to the certificate is missing. Hence, there is no proof of proper service. Service is deficient.

93. 08-39202-A-7 JOSEPH SANCHEZ HEARING - MOTION TO
FLC #1 REOPEN CASE TO FILE FINANCIAL
MANAGEMENT COURSE CERTIFICATE
7-6-09 [36]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted.

The debtor moves reopen the case in order to file the personal financial management course certificate.

The court may reopen a case to "accord relief to the debtor." 11 U.S.C. § 350(b). Motions for the reopening of cases should be "routinely granted because the case is necessarily reopened to consider the underlying request for relief." In re Dodge, 138 B.R. 602, 605 (Bankr. E.D. Cal. 1992) (citing In re Corgiat, 123 B.R. 388, 392, 393 (Bankr. E.D. Cal. 1991)).

It was unnecessary to set this motion for hearing. The court will reopen a case on ex parte application. See Local Bankruptcy Rule 5010-1(c).

The case will be reopened for the limited purpose to permit the debtor to file the certificate and to permit entry of discharge, assuming all other conditions for entry of discharge have been satisfied. The certificate shall be filed no later than 10 days after entry of the order reopening the case. If not so filed, the case will be reclosed without further notice or hearing.

94. 08-26910-A-7 MANUEL/CUCA PEREZ HEARING - MOTION TO
DJC #1 AVOID LIEN
VS. DAIMLERCHRYSLER FIN'L SVCS., ETC, LLC 7-16-09 [19]

Final Ruling: The motion will be dismissed without prejudice. The certificate of service indicates that the respondent, Chrysler Financial Services Americas LLC was served at an incorrect address, P.O. Box 9223 Farmington, MI 48333-9223 Benicia, CA 94510. It is not clear from the address whether the motion was sent to Michigan or California. Also, Chrysler Financial's address is in Farmington Hills, not Farmington. Finally, the records of the California Secretary of State indicate that the address of Chrysler Financial's agent for service, CT Corporation System, is 27777 Inkster Rd. Farmington Hills, MI 48334. Service is deficient.

95. 09-34410-A-11 HAMILTON MAY CORPORATION, HEARING - MOTION FOR
TF #1 BIONICA INC. RELIEF FROM AUTOMATIC STAY
MP HOLDINGS, LLC, VS. 7-15-09 [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, MP Holdings, seeks relief from the automatic stay as to a nonresidential real property in McClellan, California. The movant is the landlord of the property and the debtor is a tenant. After default under the lease, the movant initiated an unlawful detainer proceeding against the debtor on April 16, 2009. The debtor defaulted and the movant obtained a judgment for possession on July 2, 2009. The debtor filed the instant petition on July 13.

The movant obtained a judgment for possession of the property pre-petition. The debtor has defaulted in responding to the movant's state court unlawful detainer proceeding. There is then no lease for the debtor to assume. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with its unlawful detainer action against the debtor in state court. No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property.

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

96. 08-23311-A-7 RANDY LOEWEN HEARING - MOTION TO
FEC #5 AVOID LIEN
VS. CITICAPITAL COMMERCIAL CORP. 7-10-09 [65]

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

A judgment was entered against the debtor in favor of Citicapital Commercial Corp. for the sum of \$47,146.91 on September 20, 2007. The abstract of judgment was recorded with Tehama County on November 1, 2007. That lien

attached to the debtor's residential real property located in Red Bluff, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$350,000 as of the date of the petition. The unavoidable liens total \$310,710.01 on that same date. The unavoidable liens consist of a mortgage in the amount of \$300,000 in favor of Cynthia O'Hare, a child and spousal support lien in the amount of \$10,600, and outstanding property taxes in the amount of \$110.01. The debtor claimed an exemption pursuant to Cal. Code Civ. Proc. § 704.730(a)(2) in the amount of \$75,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

97. 08-23311-A-7 RANDY LOEWEN HEARING - MOTION TO
FEC #7 AVOID LIEN
VS. LES SCHWAB TIRE CENTERS OF CA 7-10-09 [77]

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

A judgment was entered against the debtor in favor of Les Schwab Tire Centers of California, Inc. for the sum of \$11,991.53 on January 17, 2008. The abstract of judgment was recorded with Tehama County on January 30, 2008. That lien attached to the debtor's residential real property located in Red Bluff, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$350,000 as of the date of the petition. The unavoidable liens total \$310,710.01 on that same date. The unavoidable liens consist of a mortgage in the amount of \$300,000 in favor of Cynthia O'Hare, a child and spousal support lien in the amount of \$10,600, and outstanding property taxes in the amount of \$110.01. The debtor claimed an exemption pursuant to Cal. Code Civ. Proc. § 704.730(a)(2) in the amount of \$75,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

98. 09-34512-A-7 JOHN/MARGARET ELO
RTD #1
SCHOOLS FINANCIAL CREDIT UNION, VS.

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

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

The motion will be granted.

The movant, Schools Financial Credit Union, seeks retroactive relief from the automatic stay to July 14, 2009 with respect to a 2004 Ford F-150. The movant repossessed the vehicle on July 14, without knowledge of the bankruptcy filing on July 13.

The debtor has filed a response of non-opposition.

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

The movant did not know about the bankruptcy filing when it repossessed the vehicle. And, had the movant applied for relief from stay before repossessing the vehicle, the court would have likely granted it, given the lack of equity in the vehicle. Moreover, the debtor does not oppose the motion. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

The vehicle has a value of \$20,620 and its secured claim is approximately \$26,337.

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

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(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. Relief from the automatic stay will be granted as of July 14. 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.

99. 09-31616-A-7 RUTH POULTER
PD #1
HSBC BANK USA, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-15-09 [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 Nevada City, California. The property has a value of \$450,000 and it is encumbered by claims totaling approximately \$637,311. The movant's deed is in first priority position and secures a claim of approximately \$516,815.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 15, 2009. 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.

100. 09-32516-A-7 SHAUNA CUNNINGHAM

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-17-09 [10]

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 14, 2009 was not paid.

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

101. 09-27317-A-7 MARLENE HAMILTON

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-21-09 [34]

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 16, 2009 was not paid.

However, the debtor paid the installment fee on July 30, 2009. No prejudice has resulted from the delay.

102. 08-39018-A-7 BERT/DIANA LYMAN
JKB #1
WILSHIRE CREDIT CORP., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-9-09 [62]

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

The motion will be granted.

The movant, Wilshire Credit Corporation, 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 \$287,725. The movant's deed is in first priority position and secures a claim of approximately \$240,311.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 6, 2009.

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

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

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

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

103. 09-31919-A-7 THEOLA HORTON CONT. HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
7-16-09 [17]

Final Ruling: This order to show cause will be discharged as moot because the petition was previously automatically dismissed on July 27, 2009.

104. 08-21320-A-7 HORST/CAROLYN HUETTENHAIN HEARING - FIRST AND FINAL APPLICATION FOR COMPENSATION BY COUNSEL FOR TRUSTEE (\$1,500 FEES; \$155.99 EXPENSES)
MAR #1 7-10-09 [30]

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

The motion will be granted.

Marshall & Ramos, attorney for the trustee, has filed its first and final application for approval of compensation. The requested compensation consists of \$1,500 in fees and \$155.99 in expenses, for a total of \$1,655.99. This application covers the period from March 11, 2008 through the present. The court approved the applicant's employment as the trustee's attorney on March 17, 2008. In performing its services, the applicant charged an hourly rate of \$350.

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

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

105. 09-26222-A-7 CONNIE DEVERS
KAT #1
EMC MORTGAGE CORP., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-20-09 [14]

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

The motion will be granted.

The movant, EMC Mortgage Corporation, seeks relief from the automatic stay as to a real property in Elk Grove, California. The property has a value of \$575,000 and it is encumbered by claims totaling approximately \$771,348. 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 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.

106. 09-31123-A-7 VERA KUZMENKO
EAT #1
BANK OF AMERICA, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-16-09 [19]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Meadow Vista, California. The property has a value of \$250,000 and it is encumbered by claims totaling approximately \$507,708. The movant's deed is the only encumbrance against the property.

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

107. 09-31123-A-7 VERA KUZMENKO
DMM #1
WACHOVIA MORTGAGE, FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-20-09 [26]

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

The motion will be granted.

The movant, Wachovia Mortgage, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$146,000 and it is encumbered by claims totaling approximately \$466,304. The movant's deed is in first priority position and secures a claim of approximately \$260,564.

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

108. 09-33026-A-7 JAMES/DEBRA BERG
KO #1
PLUMAS BANK, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-17-09 [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, Plumas Bank, seeks relief from the automatic stay as to 8553-8561 Weyand Avenue Sacramento, California. In the schedules, the property is identified as 8545-8561 Weyand Avenue Sacramento, California. The property has a value of \$2.5 million and it is encumbered by claims totaling approximately \$3,000,325. The movant's deed is in first priority position and secures a claim of approximately \$2,947,300.

The court concludes that there is no equity in the property 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 27, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

109. 09-33431-A-7 JIMMIE LACKEY HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-20-09 [8]

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

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

attorney's disclosure statement, schedules A 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) and 11 U.S.C. § 521(a).

However, the debtor filed all missing documents on August 5, 2009. No prejudice has resulted from the delay.

110. 09-32732-A-7 MANUEL/ALICIA GUTIERREZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-29-09 [17]

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

The debtors were given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment fee in the amount of \$99 due on July 23, 2009 was not paid.

However, the debtor paid the installment fee on July 30, 2009. No prejudice has resulted from the delay.

111. 09-32732-A-7 MANUEL/ALICIA GUTIERREZ HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
CHRYSLER FINANCIAL SVCS., ETC., VS. 7-11-09 [9]

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

The motion will be granted.

The movant, Chrysler Financial Services Americas, seeks relief from the automatic stay with respect to a 2008 Chrysler PT Cruiser. In the statement of financial affairs, the vehicle is identified as a 2007 PT Cruiser. The vehicle has a value of \$8,700 and its secured claim is approximately \$19,901. 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 29, 2009. And, in the statement of financial affairs, the debtor has indicated that the vehicle was repossessed or surrendered in June 2009.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, unless it already has possession of the vehicle, 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.

112. 09-32733-A-7 OFELIA SACLAYAN HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-28-09 [12]

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

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment fee in the amount of \$99 due on July 23, 2009 was not paid.

However, the debtor paid the installment fee on August 3, 2009. No prejudice has resulted from the delay.

113. 09-29235-A-7 LEONARD/CAROLYN AANERUD HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, VS. 7-14-09 [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, Aurora Loan Services, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$185,000 and it is encumbered by claims totaling approximately \$362,254. 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 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.

114. 09-27238-A-7 LEVI BOYNTON HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MORTGAGE, ETC., VS. 7-17-09 [23]

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

The motion will be granted.

The movant, National City Mortgage, seeks relief from the automatic stay as to a real property in Vallejo, California. The property has a value of \$228,000 and it is encumbered by claims totaling approximately \$461,676. The movant's deed is in first priority position and secures a claim of approximately \$389,178.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on June 3, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

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

115. 09-20140-A-7 SHASTA REGIONAL MEDICAL HEARING - MOTION FOR
SHB #1 CENTER, LLC AN ORDER OF EXAMINATION OF DAVID
D. JOHNSON, M.D., CHAIRMAN OF THE
BOARD AND PERSON MOST KNOWLEDGE-
ABLE OF THE DEBTOR AND DIRECTING
PRODUCTION OF DOCUMENTS
7-15-09 [168]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advised the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. See Notice of Hearing at 9. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). Thus, the respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

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

Further, the notice of hearing violates Local Bankruptcy Rule 9014-1(d)(4), which states that "[w]hen notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion ...[,] the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief."

While the movant has served the motion, supporting papers and notice of hearing on all parties identified in the proof of service, including the examinee David Johnson, the notice of hearing is ten pages long. By decreasing the font size of the narrative in the motion, the movant has incorporated the entire motion in the notice of hearing. This violates Local Bankruptcy Rule 9014-1(d)(4) as the motion and supporting papers were served on the respondent parties and the

notice of hearing does not describe the nature of the relief requested by the motion succinctly. This is inappropriate also because the language informing the respondent parties about whether and when written opposition must be filed is difficult to find. That language is located in a small paragraph near the bottom of page nine of the notice of hearing.

116. 09-20140-A-7 SHASTA REGIONAL MEDICAL HEARING - MOTION FOR
SHB #2 CENTER, LLC ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE CLAIM
(\$1,658,435.57)
7-17-09 [172]

Final Hearing: The hearing on this motion will be continued to September 29, 2009 at 9:00 a.m.

117. 09-20140-A-7 SHASTA REGIONAL MEDICAL HEARING - MOTION FOR
SHB #3 CENTER, LLC AUTHORITY TO TAKE POSSESSION OF
AND ADMINISTER DEBTOR'S MEDICAL
RECORDS AND FOR RELATED RELIEF
7-17-09 [178]

Final Hearing: The hearing on this motion will be continued to September 29, 2009 at 9:00 a.m.

118. 09-20140-A-7 SHASTA REGIONAL MEDICAL HEARING - MOTION AUTHORIZING
BLL #4 CENTER, LLC DISGORGEMENT OF ACCOUNTS
RECEIVABLE FROM THE BANKRUPTCY
ESTATE TO PRIME HEALTHCARE
SERVICES-SHASTA, LLC
7-20-09 [188]

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

The motion will be granted.

The trustee moves for approval of disgorgement by the estate of collected receivables belonging to Prime Healthcare Services-Shasta, LLC. Prime is the current operator of the medical center formerly operated by the debtor. Payors of receivables have paid the bankruptcy estate in error for services provided solely by Prime. Receivables erroneously paid to the estate's Wachovia Bank accounts are listed in exhibits A and B to the motion. Receivables erroneously paid to the estate's Bank of America accounts are listed in exhibits C and D to the motion. The trustee is still in the process of capturing the payments made in the Bank of America accounts. The receivables in the exhibits are subject to future adjustments. The trustee seeks permission to disgorge a total of \$1,804,196.45.

As the payments made into the estate's accounts are not pursuant to receivables

belonging to the estate, but were made pursuant to receivables belonging to Prime, the payments in question are not property of the estate. Accordingly, the trustee will be permitted to disgorge the payments to Prime. The motion will be granted.

119. 09-28040-A-7 NASSER MOSTOUFI

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-21-09 [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 \$74.75 due on July 6, 2009 was not paid.

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

120. 09-31440-A-7 CHRISTINE ALLEN
MET #1
THE MECHANICS BANK, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-17-09 [10]

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

The motion will be granted.

The movant, The Mechanics Bank, seeks relief from the automatic stay with respect to a leased 2005 Acura MDX. The vehicle has a value of \$20,790 in Schedule B and the outstanding amount under the lease agreement totals \$25,633. The debtor also has not made two pre-petition and one post-petition payments 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 17, 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.

121. 09-28942-A-7 STEVEN/ORALIA KRUSE HEARING - MOTION FOR
RR #2 AN ORDER APPROVING ABANDONMENT
7-14-09 [15]

Final Ruling: The motion will be dismissed because it is not accompanied by a proof of service. This violates Local Bankruptcy Rule 9014-1(e)(2) and (3), which requires the filing of a proof of service concurrently with the other pleadings, or not more than three calendar days after they are filed. The motion was filed on July 14 but without a proof of service.

Also, the motion does not specifically identify the personal property as to which the debtors are seeking abandonment.

122. 09-31942-A-7 C. CLINTOCK/ERIKA GARLINGER HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, VS. 7-17-09 [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, GMAC Mortgage, seeks relief from the automatic stay as to a real property in West Sacramento, California. The property has a value of \$163,000 and it is encumbered by claims totaling approximately \$296,392. 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 30, 2009.

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

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

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

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

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

123. 09-27647-A-7 VOLODYMYR/SVETLANA DUBINSKY HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
THORNBURY MTG. HOME LOANS, INC., VS. 7-14-09 [55]

Final Ruling: This motion will be continued to October 26, 2009 at 9:00 a.m., at the request of the parties.

124. 08-34449-A-7 CYNTHIA LEWIS HEARING - TRUSTEE'S MOTION FOR
MFB #4 EXTENSION OF DEADLINES
7-13-09 [63]

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

The motion will be granted.

The trustee seeks a 91-day extension, from July 13 to October 12, 2009, of the deadline for filing complaints objecting to discharge pursuant to section 727. The trustee seeks the extension because the debtor has not yet fully produced previously requested documents, including accounting of the administration of the probate estate of Randall Harper. Also, additional questions have arisen about the debtor's financial affairs and the disclosures made in her schedules and statements, warranting further investigation by the trustee.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was July 13, 2009. The motion was filed on July 13, 2009. Thus, the motion complies with the temporal requirements of the rule. Given the debtor's failure to turn over to the trustee previously requested documents and the need for further investigation of the debtor's financial affairs, the court concludes that cause exists for the extension of time. The motion will be granted and the deadline for filing complaints pursuant to section 727(a) by the trustee will be extended to October 12, 2009.

125. 09-32153-A-7 PEGGY BOLING HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MORTGAGE, VS. 7-17-09 [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, National City Mortgage, seeks relief from the automatic stay as to a real property in Gold River, California. The property has a value of \$375,000 and it is encumbered by claims totaling approximately \$553,349. The movant's deed is in first priority position and secures a claim of approximately \$459,277.

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

126. 09-30256-A-7 RICHARD BYGUM
MM #2

HEARING - MOTION TO
WAIVE REQUIREMENT TO FILE A
STATEMENT OF COMPLETION OF COURSE
IN PERSONAL FINANCIAL MANAGEMENT
7-8-09 [29]

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

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

The motion will be granted.

The debtor moves for waiver of the requirement for completion of a course on personal financial management because he suffered a stroke and, as a result, is unable to complete the course.

Given the debtor's health condition, the court will waive the requirement for completion of a course on personal financial management. The motion will be granted.

127. 09-31156-A-7 FRANCIS SUNGA
PD #1
WELLS FARGO BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-16-09 [11]

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

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Lincoln, California. The property has a value of \$320,000 and it is encumbered by claims totaling approximately \$361,576. 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.

128. 09-31260-A-7 LYNETTE ZENOR
RCO #1
BANK OF AMERICA, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-17-09 [13]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$80,000 and it is encumbered by claims totaling approximately \$194,688. 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 6, 2009.

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

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

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

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

129. 09-32863-A-7 ZHANNA/VALERIY PISHTOY HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-13-09 [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, Exhibits D with the credit counseling certificates for both debtors, the statement of current monthly income and means test calculation, schedules A through J, the statement of financial affairs, the statistical summary, and the summary of schedules, as required by Bankruptcy Rules 1007(b)(1)&(3), (c) and 2016(b), 11 U.S.C. § 521(a), (b) and 11 U.S.C. § 707(b)(2)(C).

However, the debtors filed all missing documents on August 5, 2009. No prejudice has resulted from the delay.

130. 09-23465-A-11 MOORE EPITAXIAL, INC. HEARING - MOTION FOR
CWS #2 RELIEF FROM AUTOMATIC STAY
GSI CREOS CORP., VS. 7-20-09 [111]

Final Ruling: This motion will be continued to August 31, 2009 at 9:00 a.m. by stipulation of the parties.

131. 09-27165-A-7 DAVID BRANHAM AND HEARING - MOTION FOR
PD #1 SARAH RYAN RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 7-24-09 [23]

Final Ruling: The motion will be dismissed without prejudice. The certificate of service does not identify the parties served with the motion. The attachment to the certificate is missing. Hence, there is no proof of proper service. Service is deficient.

132. 09-33567-A-7 TAUFA TUPOU HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-20-09 [8]

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

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

However, the debtor filed all missing documents on August 7, 2009. No prejudice has resulted from the delay.

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 22, 2009 was not paid.

However, the debtor paid the installment fee on July 28, 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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Foresthill, California. The property has a value of \$398,000 and it is encumbered by claims totaling approximately \$671,527. 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 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.

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

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

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

135. 09-28370-A-7 PEGGY MULE HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 7-8-09 [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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$283,000 and it is encumbered by claims totaling approximately \$564,815. The movant's deed is in first priority position and secures a claim of approximately \$504,816.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 1, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

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

136. 09-29571-A-7 TINA HAYES HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A., VS. 7-21-09 [12]

Final Ruling: The motion will be dismissed without prejudice. The certificate of service does not identify the parties served with the motion. The attachment to the certificate is missing. Hence, there is no proof of proper service. Service is deficient.

137. 09-29971-A-7 ROBERT/VERONICA BEEM HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK N.A., VS. 7-20-09 [12]

Final Ruling: The motion will be dismissed without prejudice. The certificate of service does not identify the parties served with the motion. The attachment to the certificate is missing. Hence, there is no proof of proper service. Service is deficient.

138. 09-30876-A-7 JOSEPHINE/AMBROSE MISLANG HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 7-17-09 [10]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Vacaville, California. The property has a value of \$344,000 and it is encumbered by claims totaling approximately \$561,022. 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.

139. 09-25877-A-7 JASON/MARCI KLIPFEL HEARING - MOTION FOR
WFZ #1 RELIEF FROM AUTOMATIC STAY
ONE WEST BANK, FSB, VS. 7-15-09 [24]

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

The motion will be granted.

The movant, One West Bank, seeks relief from the automatic stay as to a real property in Lodi, California. The property has a value of \$164,500 and it is encumbered by claims totaling approximately \$296,586. The movant's deed is in first priority position and secures a claim of approximately \$239,034.

The court concludes that there is no equity in the property 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 13, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and

prosecution of this motion. 11 U.S.C. § 506(b).

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

140. 09-31577-A-7 ROBERT/STACEY WARD HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, LLC, VS. 7-20-09 [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, Aurora Loan Services, seeks relief from the automatic stay as to a real property in Smartville, Ohio. The schedules indicate that the property is located in Zanesville, Ohio. The property has a value of \$49,000 and it is encumbered by claims totaling approximately \$43,823.

The court also notes that the trustee filed a report of no distribution on July 15, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property. This is cause for the granting of relief from stay.

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

The 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.

141. 07-30685-A-7 INTELLIGENT DIRECT MARKETING HEARING - MOTION TO
TAA #4 APPROVE AUCTIONEER'S FEES
(\$1,668.80)
7-14-09 [312]

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.

West Auctions, LLC, auctioneer for the estate, has filed its first and final application for approval of compensation through the trustee. The compensation consists of \$1,668.80 in fees. This application is for services provided on October 28, 2008. The court approved the applicant's employment as the trustee's auctioneer on September 29, 2008. The compensation is based on a 20% commission of gross sale proceeds.

11 U.S.C. § 330(a) (1) (A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The applicant's services included the sale of the estate's personal property, including, without limitation, various equipment and materials such as computers, printers, scanners, speakers, telephones, receivers, HDMI equipment, monitors, cables, extension cords, and power supplies.

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

142. 09-33086-A-7 JOHN FALLGREN
PD #1
NATIONAL CITY MORTGAGE CO., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-17-09 [9]

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

The motion will be granted.

The movant, National City Mortgage, seeks relief from the automatic stay as to a real property in Newcastle, California. The property has a value of \$500,000 and it is encumbered by claims totaling approximately \$1,039,145. The movant's deed is in first priority position and secures a claim of approximately \$1,005,559.

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

143. 09-26793-A-7 DAVID/GOLDIE GALLEGOS
PD #1
U.S. BANK N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-17-09 [23]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14

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

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

The movant, U.S. Bank, seeks relief from the automatic stay as to a real property in Citrus Heights, California.

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

As to the estate, the analysis is different. The property has a value of \$95,610 and it is encumbered by claims totaling approximately \$296,076. 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 8, 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.

144. 09-28499-A-7 MARY COTTON

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-21-09 [44]

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

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment fee in the amount of \$74.75 due on July 15, 2009 was not paid.

However, the trustee filed opposition to an earlier order to show cause, indicating that he has discovered an undisclosed asset. The debtor inherited a one-half interest in an unencumbered real property shortly before the petition date, having a value sufficient to pay all creditors in full. Hence, the trustee requested that the petition remain pending and that the filing fee be paid out of the debtor's share of the sale proceeds.

The court previously agreed with the trustee and for the same reasons it will discharge this order to show cause. Given the discovery of the debtor's interest in an unencumbered real property, this order to show cause will be discharged and the petition will remain pending. The trustee shall pay the filing fee in full out of the first available proceeds from the administration of the estate.