

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Chief Bankruptcy Judge
Sacramento, California

August 29, 2008 at 9:00 a.m.

CASES ARE ARRANGED ON THIS CALENDAR BY THE LAST TWO DIGITS OF THE CASE NUMBER. EITHER A TENTATIVE RULING OR FINAL RULING FOLLOWS EACH CALENDAR ITEM.

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 TO THAT 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 22, 2008 AT 9:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 8, 2008, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 15, 2008. 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 29, 2008 at 9:00 a.m.

1. 08-21100-A-7 LARRY/TERRI PETTIBONE
DMM #1
WACHOVIA MORTGAGE, FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-29-08 [77]

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 Loomis, California. The property has a value of \$1,649,734 and is encumbered by claims totaling approximately \$1,928,679.53. The movant's deed is in first priority position and secures a claim of \$1,618,155.27.

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

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

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

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

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

movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

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

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

2. 08-29701-A-7 MICHAEL/JOAN WOOD HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
8-5-08 [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 did not file schedules A through D, the statistical summary, and the summary of schedules, as required by Interim Rule 1007(b)(1), (c) and 11 U.S.C. § 521(a).

However, the missing documents were filed on August 8, 2008. No prejudice has resulted from the delay.

3. 08-22102-A-7 PETER/ALISSA BENNETT CONT. HEARING - DEBTORS' MOTION TO
ADS #1 COMPEL TRUSTEE TO ABANDON PROPERTY
6-27-08 [16]

Tentative Ruling: The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in a 1995 Toyota Corolla vehicle. The vehicle is over-encumbered, with a scheduled value of \$2,485 and a secured claim totaling \$6,421.

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

Given that the secured claim exceeds the scheduled value of the vehicle, the court concludes that the vehicle is of inconsequential value to the estate. The motion will be granted.

4. 08-22102-A-7 PETER/ALISSA BENNETT CONT. HEARING - MOTION FOR
ADS #2 REDEMPTION OF PERSONAL PROPERTY
6-27-08 [20]

Tentative Ruling: The motion will be granted.

The debtor seeks to redeem a 1995 Toyota Corolla. The debtor has produced evidence that the vehicle has a value of \$769.90, after deducting major repair costs of \$1,455.10. The debtor listed Tri Counties Bank as holding a secured claim in the approximate amount of \$6,421.

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 or has been abandoned by the bankruptcy estate.

The court has granted the debtor's motion for abandonment of the vehicle.

The motion will be granted. The sum of \$4,855 shall be tendered within 15 days of entry of the order.

5. 08-25802-A-7 ANDREW KONG HEARING - MOTION TO
WITHDRAW AS ATTORNEY
7-21-08 [21]

Final Ruling: This motion will be dismissed because it was set on 11 days' notice of hearing, in violation of Local Bankruptcy Rules 9014-1(f)(1) & (2). And, the moving party has not obtained an order shortening the time for a hearing on this motion. See Local Bankruptcy Rule 9014-1(f)(3).

6. 08-29202-A-7 TERRY/SUSAN STAHMANN HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE, INC., VS. 7-18-08 [9]

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

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Pollock Pines, California.

With respect to the debtor, the property has a value of \$300,000 and is encumbered by claims totaling approximately \$299,377.68. Sale costs are not encumbrances for purposes of an 11 U.S.C. § 362(d)(2) analysis. The movant holds both the first and second deeds against the property, but the motion relates only to the first deed, securing a claim of \$141,877.68. This leaves approximately \$622.32 of equity in the property.

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

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

The movant also has an equity cushion of approximately \$158,122.32. This equity cushion is sufficient to adequately protect the movant's interest in the property until the debtor obtains a discharge or the case is closed without entry of a discharge. See 11 U.S.C. § 362(c)(1) & (c)(2). At that point, the automatic stay will expire as a matter of law. The debtor is scheduled to obtain a discharge soon after October 14, 2008. The trustee filed a report of no distribution on August 19, 2008 and there is nothing in the file suggesting

that the case will remain open a significant period beyond October 14, 2008. Thus, relief from stay as to the debtor under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the debtor.

As to the estate, the analysis is different. The trustee filed a report of no distribution on August 19, 2008.

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

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

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

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

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

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

7. 08-29304-A-7 PATRICK/CARRIE WISEMAN HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 7-28-08 [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, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Redding, California. The property has a value of \$278,000 and is encumbered by claims totaling approximately \$346,154.45. The movant's deed is in first priority position and secures a claim of \$308,743.45.

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

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

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

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

8. 08-29704-A-7 RUEANNA SHARRAH HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE, VS. 8-1-08 [8]

Tentative Ruling: Although the movant has given 28 days' notice of the hearing, the court will deem the motion to be brought pursuant to Local Bankruptcy Rule 9014-1(f)(2) because the notice of hearing does not require written opposition before the hearing and invites oppositions to be presented at the hearing. Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the

motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Chase Home Finance, seeks relief from the automatic stay as to a real property in Chico, California. The property has a value of \$300,000 and is encumbered by claims totaling approximately \$365,347.92. 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 \$274,495.92.

The court concludes that there is no equity in the property 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 loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also *Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II)*, 139 F.3d 684, 689 (9th Cir. 1998).

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

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

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

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

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

9. 08-27906-A-7 COMFORT OLUDE-MOON HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 7-18-08 [13]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$325,000 and is encumbered by claims totaling approximately \$472,112.36. The movant's deed is in first priority position and secures a claim of \$322,112.36.

The court concludes that there is no equity in the property 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 18, 2008. 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 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.

10. 08-29006-A-7 BONNIE ANDRADE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-24-08 [11]

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

This order to show cause was issued because the debtor did not 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 Interim 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 15, 2008. No prejudice has resulted from the delay.

11. 08-27709-A-7 NICHOLAS CORDANO HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
AMERICAN HOME MTG. SERVICING INC., VS. 7-30-08 [17]

Tentative Ruling: Although the movant has given 30 days' notice of the hearing, the court will deem the motion to be brought pursuant to Local Bankruptcy Rule 9014-1(f)(2) because the notice of hearing does not require written opposition before the hearing and invites oppositions to be presented at the hearing. 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.

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

13. 08-21112-A-7 CAROL OSBORN HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
8-1-08 [25]

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 did not file the statement of current monthly income and means test calculation, as required by 11 U.S.C. § 707(b)(2)(C).

However, the debtor filed the statement on August 4, 2008. No prejudice has resulted from the delay.

14. 08-28413-A-7 JUAN/GABRIELLE MCDONALD HEARING - MOTION FOR
MET #1 RELIEF FROM AUTOMATIC STAY
AMERICAN HONDA FINANCE CORP., VS. 7-30-08 [11]

Tentative Ruling: The motion will be dismissed as moot.

The movant, American Honda Finance Corp., seeks relief from the automatic stay with respect to a 2006 Honda Accord.

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 June 24, 2008 and a meeting of creditors was first convened on August 1, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than July 24. The debtor filed a statement of intention on July 15, 2008, indicating only an intent to "retain" the property.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a

reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor filed a statement of intention on July 15, the debtor did not indicate an intent to redeem the vehicle or reaffirm the debt secured by the vehicle. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on July 24, 2008, 30 days after the petition date.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on August 4, 2008, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on July 24, 2008.

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.

15. 08-24016-A-7 JOYCE/MICHAEL OLKIEWICZ HEARING - MOTION FOR
MDE #1 RELIEF FROM AUTOMATIC STAY
LITTON LOAN SERVICING, VS. 7-25-08 [25]

Final Ruling: This motion will be dismissed as moot because the case was dismissed on August 11, 2008. See 11 U.S.C. § 362(c)(2)(B).

16. 08-26416-A-7 ALEKSANDR BARBARIN AND HEARING - MOTION FOR
RFM #1 ALLA DYACHENKO RELIEF FROM AUTOMATIC STAY
KEYBANK, VS. 7-29-08 [34]

Tentative Ruling: Although the movant has given 31 days' notice of the hearing, the court will deem the motion to be brought pursuant to Local Bankruptcy Rule 9014-1(f)(2) because the notice of hearing does not require written opposition before the hearing and invites oppositions to be presented at the hearing. 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, seeks relief from the automatic stay with respect to a 2005 Maxum 1800 SR boat. The boat has a value of \$15,000 and its secured claim is approximately \$18,781.52.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on June 18, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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

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

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

17. 08-27716-A-7 WILLIE/ROXANE HARPER HEARING - MOTION FOR
MEA #1 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE HOME LOANS, INC., VS. 7-25-08 [18]

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

The motion will be granted.

The movant, Countrywide Home Loans, Inc., seeks relief from the automatic stay as to a real property in Tracy, California. The property has a value of \$400,000 and is encumbered by claims totaling approximately \$786,688.46. See Schedule A. The movant's deed is in first priority position and secures a claim of \$627,688.46.

The court concludes that there is no equity in the property 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, 2008. 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.

18. 08-28316-A-7 JOSE BASALDUA-VALDEZ HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE, LLC, VS. 7-18-08 [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, Chase Home Finance, seeks relief from the automatic stay as to a real property in Yuba City, California. The property has a value of \$179,908 and is encumbered by claims totaling approximately \$189,279.18. 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 August 4, 2008.

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

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

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 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. 08-25418-A-7 AGUSTIN/ELIZABETH DELGADO CONT. HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 7-7-08 [15]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Central Mortgage Company, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$250,000 and is encumbered by claims totaling approximately \$272,185.74. The movant's deed is the only encumbrance against the property.

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

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

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

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

20. 08-25418-A-7 AGUSTIN/ELIZABETH DELGADO HEARING - MOTION TO
MDM #1 ABANDON REAL PROPERTY
7-23-08 [21]

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

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

The motion will be granted.

The trustee seeks to abandon the estate's interest in two real properties, a property in Acampo, California and a property in Sacramento, California. The properties are over-encumbered.

11 U.S.C. § 554(a) provides that a trustee may abandon any estate property that is burdensome or of inconsequential value or benefit to the estate, after notice and a hearing. The property in Acampo has an approximate value of \$400,000, whereas its encumbrances total approximately \$644,746. The property in Sacramento has an approximate value of \$250,000, whereas its encumbrances total approximately \$264,108. Given this, the court concludes that the properties are of inconsequential value to the estate. The motion will be granted.

21.	07-22121-A-7	MARIA GARCIA	HEARING - MOTION FOR
	07-2472		NEW TRIAL DATE IN
	PAUL KALRA, VS.		ADVERSARY PROCEEDING
	MARIA GARCIA		7-29-08 [44]

Tentative Ruling: The motion will be granted on the condition stated in the ruling.

The plaintiff, Paul Kalra, moves for a new trial date on the basis that his tardiness at the last trial date, on July 24, was due to an unexpected traffic delay.

The defendant, Maria Garcia, who is also the debtor in the underlying bankruptcy case, opposes the motion. The plaintiff has filed a reply, seeking a new trial under Fed. R. Civ. P. 59, as made applicable here by Fed. R. Bankr. P. 9023. The defendant has filed a supplemental opposition, arguing that reconsideration should not be granted under Fed. R. Civ. P. 60(b).

Trial in this case was scheduled for July 24, 2008 at 9:00 a.m. Because the plaintiff did not appear at 9:00 a.m., the court entered an order dismissing the case with prejudice. The order was entered on July 24. The plaintiff attempted to appear at the trial on July 24, but after the court had already adjourned the trial and dismissed the case. On July 29, 2008, five days after the dismissal, the plaintiff filed the instant motion. Given that this motion was filed only five days after the dismissal order, the court will consider the applicability of both Fed. R. Civ. P. 59(a) & (e), as made applicable here by Fed. R. Bankr. P. 9023, and Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024.

Fed. R. Civ. P. 59(a)&(e) provides as follows:

(a)(1) "The court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows: (A) after a jury trial ...; or (B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court. (2) After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new

ones, and direct the entry of a new judgment.

...

(e) A motion to alter or amend a judgment must be filed no later than 10 days after the entry of the judgment."

Under Rule 59(a)(2), three grounds exist for the granting of a new trial in nonjury actions: manifest error of law, manifest error of fact, or newly discovered evidence. Brown v. Wright, 588 F.2d 708, 710 (9th Cir. 1978). And, the burden of proof is on the moving party. See Anglo-American Gen. Agents v. Jackson Nat. Life Ins. Co., 83 F.R.D. 41, 43 (N.D. Cal. 1979).

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

Given that the court did not conduct a trial, due to the plaintiff's absence, the grounds for a new trial under Rule 59(a)(2) and the grounds for setting aside an order or a judgment under Rule 60(b)(2), (3), (4), or (5) are not applicable. This leaves only Rule 60(b)(1) and (6) as potentially applicable.

The plaintiff contends that his tardiness at trial was due to an unanticipated traffic delay. He alleges leaving his home at 6:45 a.m., approximately 67.45 miles from the court, in an attempt to reach the court by approximately 8:00 a.m. Due to traffic delays, though, the plaintiff did not reach the court until approximately 9:10 a.m. He argues that this qualifies for mistake, inadvertence, surprise, or excusable neglect under Rule 60(b)(1). The court agrees. A reasonable person traveling the distance driven by the plaintiff would have planned additional time for unexpected delays. And, the plaintiff planned approximately one hour into his trip for unexpected delays. The court finds this to be reasonable. Hence, it concludes that the traffic encountered by the plaintiff on his way to the trial amounted to a surprise under Rule 60(b)(1). Accordingly, the order dismissing the case will be set aside and the court will schedule a new trial date at the hearing.

Nevertheless, the defendant should not have to bear the burden of compensating her attorney for the appearance on July 24. The plaintiff then must compensate the defendant for his attorney's fees and costs in making the appearance at the July 24 trial. Payment is a condition to a trial.

22. 08-27721-A-7 RAUL VILLAFANE HEARING - MOTION FOR
PPR #1 RELIEF FROM AUTOMATIC STAY
NATIONPOINT ETC., ET AL., VS.

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

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

The motion will be granted.

The movant, Nationpoint, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$241,500 and is encumbered by claims totaling approximately \$396,659.48. The movant's deed is in first priority position and secures a claim of \$309,826.19.

The court concludes that there is no equity in the property 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 18, 2008. 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.

23. 08-30021-A-7 KENT/CARLA TEIXEIRA HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
WASHINGTON MUTUAL BANK, VS. 8-12-08 [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, Washington Mutual Bank, seeks relief from the automatic stay as to a real property in Oroville, California. The property has a value of \$230,000 and is encumbered by claims totaling approximately \$262,850.46. The movant's deed is in second priority position and secures a claim of \$30,850.46.

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

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

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

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

24. 08-28723-A-7 WALTER HOWELL, JR. HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
DAIMLERCHRYSLER FIN'L SVCS. AMERICAS, VS. 7-17-08 [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, Daimlerchrysler Financial Services Americas, seeks relief from the automatic stay with respect to a 2007 Dodge Ram 2500. The vehicle has a value of \$25,675 and its secured claim is approximately \$27,525.78.

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 August 12, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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

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

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

fact that the movant's vehicle is being used by the debtor without compensation and is depreciating in value.

25. 08-27824-A-7 JOSEPH/TERESA ESPINOSA HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER SERVICES, INC., VS. 8-7-08 [14]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Wachovia Dealer Services, Inc., seeks relief from the automatic stay with respect to a 2005 Ford Explorer.

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 June 11, 2008 and a meeting of creditors was first convened on July 21, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than July 11. The debtor filed a statement of intention on the petition date, indicating an intent to "retain" the vehicle.

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

Here, although the debtor filed a statement of intention on the petition date, the debtor did not indicate an intent to redeem the vehicle or reaffirm the debt secured by the vehicle. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on July 11, 2008, 30 days after the petition date.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on July 24, 2008, indicating an intent not to administer the vehicle or any other assets.

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

July 11, 2008.

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.

26. 08-28025-A-7 JOHN CHASE HEARING - MOTION FOR
RJC #1 RELIEF FROM AUTOMATIC STAY
SANTANDER CONSUMER USA INC., VS. 7-17-08 [14]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Santander Consumer U.S.A., Inc., seeks relief from the automatic stay with respect to a 2004 Oldsmobile Alero.

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 June 17, 2008 and a meeting of creditors was first convened on July 25, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than July 17. The debtor has not filed a statement of intention.

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, the debtor has not filed a statement of intention. 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 July 17, 2008, 30 days after the petition date.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on July 29, 2008, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on July 17, 2008.

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.

27. 08-28625-A-7 MIGUEL/MARTHA GUTIERREZ HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
DCFS USA LLC, VS. 7-14-08 [15]

Tentative Ruling: The motion will be denied.

The movant, DCFS U.S.A. LLC, seeks relief from the automatic stay with respect to a 2006 Mercedes Benz E350. The movant alleges that the retail value of the vehicle is \$32,904 and its secured claim is approximately \$37,993.65.

However, the vehicle must be valued at its replacement value. In a chapter 7 case of an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

The retail value suggested by the creditor cannot be relied upon by the court to establish the vehicle's replacement value because the valuation does not take into account the condition of the vehicle. Moreover, the court has no evidence whatsoever about the condition of the vehicle. The court then has no evidence of value. As a result, the court cannot determine whether there is any equity in the vehicle and whether the movant's interest in it is adequately protected. Therefore, the motion will be denied.

28. 08-29326-A-7 IRENE TRUE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-29-08 [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 did not file an attorney's disclosure statement, as required by Fed. R. Bankr. P. 2016(b).

The debtor has filed a response, indicating that the disclosure statement was filed on July 30. A review of the case docket confirms this. No prejudice has resulted from the delay.

29. 07-29327-A-7 CAMILLE/PATRICK MCDONNELL HEARING - PLAINTIFF'S MOTION FOR
08-2073 JMO #3 SUMMARY JUDGMENT
AMERICAN EXPRESS 7-24-08 [18]
BANK, FSB, VS.
PATRICK MCDONNELL

Final Ruling: Because the court has already conducted a trial and announced its judgment, this motion will be dismissed.

30. 08-29327-A-7 RICHARD SPIELMAN HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MORTGAGE, VS. 8-5-08 [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, National City Mortgage, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$190,000 and is encumbered by claims totaling approximately \$286,685.92. The movant's deed is in first priority position and secures a claim of \$266,396.27.

The court concludes that there is no equity in the property 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 19, 2008.

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

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

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

31. 08-25228-A-7 NICHOLAS IACOPI HEARING - MOTION FOR
DGN #1 RELIEF FROM AUTOMATIC STAY
FORD MOTOR CREDIT CO., VS. 8-15-08 [23]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Ford Motor Credit, seeks relief from the automatic stay with respect to a 2008 Ford F-150.

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

The petition here was filed on April 24, 2008 and a meeting of creditors was first convened on June 11, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than May 24. The debtor filed a statement of intention on the petition date, indicating an intent to reaffirm the debt secured by the vehicle.

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

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

Here, although the debtor indicated an intent to reaffirm the debt secured by the vehicle, the debtor did not move to reaffirm within the 30-day deadline after the June 11, 2008 meeting of creditors or any time after. No reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on July 11, 2008, 30 days after the meeting of creditors.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on June 11, 2008, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on July 11, 2008.

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.

32. 08-28429-A-7 JUAN ANICETE
APN #1
WELLS FARGO FINANCIAL, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-25-08 [12]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Wells Fargo Financial, seeks relief from the automatic stay with respect to a 2005 Honda Accord.

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 June 24, 2008 and a meeting of creditors was first convened on July 23, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than July 23. 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 debtor did not list the vehicle 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 July 24, 2008, 30 days after the petition date.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on

July 24, 2008, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on July 24, 2008.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

33. 08-25831-A-7 JOHN/BEHANG ANSTAETT HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
DCFS TRUST, VS. 7-25-08 [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, DCFS Trust, seeks relief from the automatic stay with respect to a leased 2007 Chrysler 300. The vehicle is identified as a 2008 Chrysler 300C in the schedules.

The debtor has not made three post-petition payments to the movant on account of the lease. This is cause for the granting of relief from stay. Further, the trustee filed a report of no distribution on June 13, 2008. The above facts make it unlikely that the trustee will attempt to assert any interest in the lease.

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.

34. 08-26131-A-7 ANGELA LAWRENCE
EAT #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-28-08 [16]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Lehman Brothers Bank, seeks relief from the automatic stay as to a real property in Elk Grove, California. The property has a value of \$210,000 and is encumbered by claims totaling approximately \$318,123.54. 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 19, 2008. 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.

35. 07-31232-A-7 RAYMOND/LILA SMITH
GCB #1
GRANITE COMMUNITY BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-31-08 [70]

Final Ruling: The motion will be dismissed without prejudice.

According to the certificate of service accompanying the motion, the motion was not served on the debtors.

Fed. R. Bankr. P. 9013 and 9014(a) provide that a request for an order shall be made by a motion. Fed. R. Bankr. P. 9014(b) further provides that a motion must be served in the manner provided for service of a summons and a complaint. Fed. R. Bankr. P. 7004(b) permits service of a summons and a complaint by first

class mail. But, nothing in Fed. R. Bankr. P. 7004 permits service to the debtor's attorney to the exclusion of the debtor. Contra Fed. R. Bankr. P. 7004(g). Accordingly, service is defective.

In addition, movant has not filed an information sheet as required by Local Bankruptcy Rule 4001-1(c). The motion will be dismissed.

36. 08-27534-A-7 KENNETH KARMOLINSKI HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 7-16-08 [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, Mortgage Electronic Registration Systems, Inc., as nominee for Equifirst Corporation, seeks relief from the automatic stay as to a real property in Tracy, California. The property has a value of \$427,500 and is encumbered by claims totaling approximately \$764,470.44. The movant's deed is in first priority position and secures a claim of \$515,325.14.

The court concludes that there is no equity in the property 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, 2008. 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.

37. 08-28435-A-7 FRANKLIN/MIRIAM DELAROSA HEARING - MOTION FOR
MET #1 RELIEF FROM AUTOMATIC STAY
COMMONWEALTH CENTRAL C.U. 7-30-08 [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, Commonwealth Central Credit Union, seeks relief from the automatic stay with respect to a 2006 Hummer. The vehicle has a value of \$29,000 and its secured claim is approximately \$40,027.47.

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 August 5, 2008. And, the debtor surrendered the vehicle to the movant pre-petition, on or about June 19, 2008. This is cause for the granting of relief from stay.

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

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

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

38. 08-29536-A-7 KEVIN/TRACY MORRIS HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE, INC., VS. 8-4-08 [8]

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

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Rocklin, California. The property has a value of \$650,000 and is encumbered by claims totaling approximately \$917,037.39. The movant's deed is in first priority position and secures a claim of \$675,037.39.

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

39. 08-23037-A-7 CHRYS/RANDY LARSON
MFB #1

CONT. HEARING - OBJECTION TO
DEBTORS' CLAIM OF EXEMPTION
AND MOTION FOR TURNOVER OF
NON-EXEMPT ASSETS
6-10-08 [13]

Tentative Ruling: The objection will be overruled and the motion for turnover denied except to the extent the debtor will be required to turn over to the trustee the proceeds exempted under Cal. Civ. Proc. Code § 703.140(b)(7).

At the last hearing on this motion, on July 14, 2008, the court issued the following ruling:

"The court continues the hearing to August 29 at 9:00 a.m. for further evidence and briefing.

The trustee objects to Chrys Larson's exemption of her interest in a matured life insurance policy on the life of her husband, Randy Larson, who passed away unexpectedly on March 31, 2008, 18 days after the petition was filed. The trustee also requests turnover of the insurance proceeds.

The debtors with their children, comprise a four-member household. Their joint petition was filed on March 13, 2008. They duly scheduled a life insurance policy with Prudential, with \$20,000 cash value, \$20,000 in loans, and a net value of \$0.00. Because the debtors apparently believed that the life insurance policy had no net cash value, their original Schedule C included no exemption of it.

At the April 23 meeting of creditors, Chrys Larson notified the trustee of her husband's passing on April 14. On May 12, she amended Schedules B and C, increasing the value of her husband's matured life insurance policy to \$42,486.42 and exempting its full value as follows: \$11,075 under Cal. Civ. Proc. Code § 703.140(b)(8), \$8,093.09 under Cal. Civ. Proc. Code § 703.140(b)(5), and \$23,318.33 under Cal. Civ. Proc. Code § 703.140(b)(11)(C).

The court notes that the record is unclear on one vital point. As originally scheduled, the life insurance policy had no cash value. If such was true, on

the petition date, the exemption at Cal. Civ. Proc. Code § 703.140(b) (7) afforded an unlimited exemption of the unmaturred life insurance. That is, if the policy was for "term life" or was a "whole" life policy without any cash value, the debtors could have exempted the entire policy regardless of the amount of any death benefit.

The trustee then objected to the amounts claimed as exempt under sections 703.140(b) (8) and (b) (11) (C). He argues that the language of section 703.140(b) (8) states that the provision applies only to unmaturred policies. He also contends that, under section 703.140(b) (11) (C), the surviving debtor was not a dependent of her husband and the insurance proceeds are not necessary for the surviving debtor's support, because only she was employed at the time of her husband's passing.

The objection apparently prompted Chrys Larson to file yet another amendment to Schedule C. The \$11,075 amount previously claimed as exempt under section 703.140(b) (8) is now claimed as exempt under section 703.140(b) (11) (C). Hence, the trustee's objection is now to an exemption claim in the amount of \$34,393.33, pursuant to section 703.140(b) (11) (C).

Chrys Larson argues that she was a dependent of her husband, both on the petition date and at the time of his death by virtue of their spousal relationship and financially.

Generally, rights to exemptions of property are determined as of the date the petition is filed. Cisneros v. Kim (In re Kim), 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000); In re Kolsch, 58 B.R. 67, 68 (Bankr. D. Nev. 1986). "[A]ny post-petition disposition of the property or post-petition change in the identity of the property . . . has no impact upon the exemption analysis." Kim, 257 B.R. at 685 (citing Graziadei v. Graziadei (In re Graziadei), 32 F.3d 1408, 1410 (9th Cir. 1994)).

This basic principal appears to have confused both Ms. Larson and the trustee. On the date of the petition, there was no matured life insurance benefit because Mr. Larson not yet passed away. Therefore, the debtors were limited to exempting \$11,075 of cash value pursuant to section 703.140(b) (8) and \$21,825 pursuant to the "wildcard" exemption permitted by section 703.140(b) (5), less whatever other exemptions were claimed under section 703.140(b) (5). The exemption permitted by section 703.140(b) (7), though not claimed by the debtors, could have potentially exempted an unmaturred life insurance benefit other than the policy's cash value. The exemption permitted by section 703.140(b) (11) (C) for a matured life insurance benefit was not applicable on the petition date because Mr. Larson was alive.

In re Walters, 14 B.R. 92 (Bankr. S.D. W.Va. 1981), is illustrative. This case considered the federal exemptions permitted by 11 U.S.C. § 522(d) (7), the federal parallel of section 703.140(b) (7). The debtors utilized section 522(d) (7) to exempt a insurance policy on the life of their son. One week after the petition was filed, their son died. An objection to the exemption was overruled. This ruling was affirmed on appeal. In re Walters, 724 F.2d 1081 (4th Cir. 1984). The Fourth Circuit concluded that even though 11 U.S.C. § 541(a) (5) (C) purports to sweep into the bankruptcy estate all life insurance benefits received by debtors within 180 days of the filing of the petition, because the debtors' had exempted the then unmaturred life insurance when the petition was filed, the post-petition benefits belonged to the debtor and not

the bankruptcy estate.

Because this ruling differs materially from that discussed at the July 14 hearing, because the record is unclear as whether the policy had any cash value on the petition date and whether the benefits paid post-petition represented a death benefit rather than a return of cash value, and because the debtor might conceivably wish to further amend her exemptions to take advantage of section 703.140(b)(7), if applicable, the court continues the hearing on this matter and the related motion to August 29 at 9:00 a.m. Additional opposition from the debtor shall be filed and served by August 15 and the trustee's reply shall be filed and served by August 22."

In response to the above ruling, the debtor filed a supplemental opposition and the trustee filed a reply. In his reply, the trustee cites In re Woodson, 839 F.2d 610, 618-19 (9th Cir. 1988), a Ninth Circuit case that rejects the conclusions reached by In re Walters, 14 B.R. 92 (Bankr. S.D. W.Va. 1981). Woodson draws a distinction between exemptions of a debtor's ownership interest in a life insurance policy and that debtor's interest in proceeds from a life insurance policy as a beneficiary of the policy. The court agrees with the trustee that Woodson is the law applicable in this case.

Under Woodson, then, the debtor can exempt her ownership interest in a life insurance policy under Cal. Civ. Proc. Code § 703.140(b)(7), she can exempt her interest in any cash value of the policy under Cal. Civ. Proc. Code § 703.140(b)(8) and Cal. Civ. Proc. Code § 703.140(b)(5), and she can exempt her beneficiary's interest in the proceeds of a matured life insurance policy under Cal. Civ. Proc. Code § 703.140(b)(11)(C).

The debtor's latest amendment of Schedule C, dated August 15, has the following exemptions relating to the life insurance policy at issue: an exemption of \$2,964.48 under Cal. Civ. Proc. Code § 703.140(b)(7), an exemption of \$8,093.09 under Cal. Civ. Proc. Code § 703.140(b)(5), and an exemption of \$31,428.85 under Cal. Civ. Proc. Code § 703.140(b)(11)(C).

Turning to the merits, to the extent the debtor has claimed exemptions under Cal. Civ. Proc. Code §§ 703.140(b)(5) and (7), the trustee has not objected to those exemptions. His reply to the supplemental opposition erroneously refers to Cal. Civ. Proc. Code § 703.140(b)(8) as the basis for an exemption of \$2,964.48, filed August 15, 2008. See August 22 Reply of Trustee ¶ 20. The statutory provision in the August 15 Amended Schedule C is Cal. Civ. Proc. Code § 703.140(b)(7).

Second, the debtor states in the supplemental opposition that the cash value of the life insurance policy on the petition date was \$2,964.48, the amount claimed as exempt under Cal. Civ. Proc. Code § 703.140(b)(7). But, this is not the proper statutory provision for claiming an exemption in the cash value of an unexpired life insurance policy. Cal. Civ. Proc. Code § 703.140(b)(7) applies to the exemption of the debtor's ownership interest in a life insurance policy. It permits the exemption of "[a]ny unexpired life insurance contract owned by the debtor." The proper provision for exempting the cash value of a life policy is Cal. Civ. Proc. Code § 703.140(b)(8). Accordingly, the exemption of the cash value under Cal. Civ. Proc. Code § 703.140(b)(7) will be disallowed and the debtor shall turn over those proceeds to the trustee.

Third, the court notes that neither party has clearly stated whether and what portion of the benefits paid post-petition represented a death benefit rather than a return of cash value. As a result, the court cannot determine whether

and to what extent the debtor's claim of exemption on the proceeds from the policy is subject to the statutory provision permitting exemptions of cash value, *i.e.*, Cal. Civ. Proc. Code § 703.140(b)(8). Because the trustee has the burden of proof, the trustee loses this point.

Fourth, to the extent the debtor has exempted the proceeds from her husband's matured life insurance policy under Cal. Civ. Proc. Code § 703.140(b)(11)(C), and that provision is applicable, the objection will be overruled.

Under Cal. Code Civ. Proc. § 703.140(b)(11)(C), dependency is determined as of the date of the individual's passing. Here, Randy Larson passed away on March 31. At that time, he had been already employed with the school district for 40 hours. See Exhibit A to Opposition. This means that, at the time of his passing, he contributed income to the debtors' household. A review of schedules I and J shows that Randy Larson's income was needed to support Chrys Larson because her income alone was not sufficient to cover all household expenses. Her income totals \$3,934.80, whereas household expenses are \$5,214.15, resulting in a negative difference of \$1,279.35.

While the trustee argues that Randy Larson's passing would have decreased household expenses, enabling Chrys Larson to "break even," the test under section 703.140(b)(11)(C) is not what happened after his passing, but is whether Chrys Larson was his dependent at the time of his passing.

Moreover, even considering dependency as of the petition date, Randy Larson provided house and vehicle maintenance, and did yard work. Without determining the financial value of Randy Larson's household work, it is sufficient for the court to conclude that Chrys Larson was a dependent of Randy Larson as of the petition date. The court also notes that, under California law, Randy Larson has a legal obligation to provide support to Chrys Larson. See Cal. Fam. Code § 720.

Further, the court disagrees with the trustee that dependence under Cal. Code Civ. Proc. § 703.140(b)(11)(C) is necessarily limited to financial dependence. Both cases cited by the trustee in support of his position, In re Rigdon and In re Sommer, rely on the court's interpretation of Illinois law, not California law. In re Rigdon, 133 B.R. 460 (Bankr. S.D. Ill. 1991); In re Sommer, 228 B.R. 674 (Bankr. C.D. Ill. 1998). The trustee has offered no California or otherwise binding legal authority on point. The only California case cited by the trustee, Hazelwood v. White, 57 Cal. App. 3d 693 (1976), involves a parents' qualification to bring a wrongful death action for the death of their child. The purpose of that statute, however, is different from the purpose of the statute in this matter. Identifying a dependent who is qualified to bring a wrongful death action on behalf of a decedent is different from identifying a dependent for purposes of exempting insurance proceeds in a bankruptcy proceeding, where the filing spouse of the debtor has passed away.

The foregoing considerations lead the court to conclude that Chrys Larson was a dependent, for purposes of Cal. Code Civ. Proc. § 703.140(b)(11)(C), of Randy Larson both at the time of his passing and as of the petition date.

Turning now to whether the insurance proceeds are necessary for Chrys Larson's and her two daughters' support.

The trustee argues that, after Randy Larson's passing, the following items must be subtracted from Schedule J: disability insurance of \$100, life insurance of \$116, STRS retirement plan withholding of \$504, 403(b) plan withholding of

\$300, and a portion of the electricity and fuel, telephone, cellular telephone, direct TV, food, transportation, medical and dental expenses, and auto insurance.

However, rights to exemptions of property are determined as of the date the petition is filed. Thus, Randy Larson's post-petition passing cannot be considered in determining whether the insurance proceeds are necessary for Chrys Larson's and her two daughters' support.

Schedules I and J clearly show that, as of the petition date, Chrys Larson could not have covered the total household expenses of \$5,214.15 with her income of \$3,934.80. This makes the insurance proceeds necessary for her and her daughters' support.

Moreover, even if the court were to consider Randy Larson's passing in determining necessity for support, the expense deductions suggested by the trustee are still insufficient to cover the expense deficit in Schedule J.

In her declaration, Chrys Larson has shown that:

-Her portion of the life insurance premiums are \$66.36, resulting in a net decrease of only \$49.64 in expenses (\$116.00 - \$66.36).

-The STRS withholding is mandatory, resulting in a net decrease of \$0.00.

-Medical and dental insurance deductions would not change because premiums are based on a household of three or more persons, and she has two daughters, resulting in a net decrease of \$0.00.

-Her tax deductions would increase if she discontinues the 403(b) plan contributions. But, she provides no evidence of how much her taxes would increase. This then results in a net decrease of \$300.

In addition, the court would deduct one-quarter of Chrys Larson's:

- electricity and fuel ($\$220 / 4 = \55),
- telephone, including cellular telephone ($\$60 + \$160 / 4 = \$55$),
- food ($\$700 / 4 = \175),
- transportation expenses ($\$400 / 4 = \100),
- medical and dental expenses ($\$478 / 4 = \119.50), and
- auto insurance ($\$400 / 4 = \100). This totals \$604.50 ($\$2,418 / 4$).

The above adjustments total a decrease in expenses of \$1,054.14 ($\$49.64 + \$300 + \$604.50 + \100 for Randy Larson's disability insurance). But, this amount does not cover the expense deficit of \$1,279.35 in Schedule J. And, the foregoing adjustments do not take into account the addition of extra expenses for home maintenance, vehicle maintenance, yard work, or the post-petition medical and funeral expenses for Randy Larson. Declaration of Chrys Larson ¶9. Based on the foregoing considerations, then, the court concludes that the insurance proceeds are necessary for Chrys Larson's and her daughters' support. The objection to the claim of exemption under Cal. Civ. Proc. Code § 703.140(b)(11)(C) will be overruled.

The trustee's objection will be overruled and the motion for turnover will be denied except to the extent the debtor is required to turn over to the trustee the proceeds exempted under Cal. Civ. Proc. Code § 703.140(b)(7).

40. 08-23037-A-7 CHRYS/RANDY LARSON
MFB #2

CONT. HEARING - MOTION OF
THE CHAPTER 7 TRUSTEE FOR
EXTENSION OF DEADLINES
6-12-08 [17]

Tentative Ruling: The motion will be denied.

The trustee seeks a 91-day extension, from June 23, 2008 to September 22, 2008, of the deadline for filing complaints objecting to discharge under 11 U.S.C. § 727. The trustee seeks the extension on the assumption that the court will sustain his objection to the debtor's exemption claim. See Objection to Claim of Exemption and Motion for Turnover, DCN MFB #1.

However, given that the trustee's objection to the claim of exemption has been overruled in large part, the court sees no cause for extension of the deadline for filing section 727 complaints. Accordingly, the motion will be denied.

41. 08-27938-A-7 ELIZABETH WEEKS
PD #1
WELLS FARGO HOME MORTGAGE, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-23-08 [18]

Final Ruling: This motion will be dismissed as moot because the case was automatically dismissed on July 29, 2008 pursuant to 11 U.S.C. § 521(i)(1). See 11 U.S.C. § 362(c)(2)(B).

42. 08-29039-A-7 GARY KING
WGM #1
WASHINGTON MUTUAL BANK, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-30-08 [10]

Tentative Ruling: Although the movant has given 30 days' notice of the hearing, the court will deem the motion to be brought pursuant to Local Bankruptcy Rule 9014-1(f)(2) because the notice of hearing does not require written opposition before the hearing and invites oppositions to be presented at the hearing. 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, Washington Mutual Bank, seeks relief from the automatic stay as to a real property in Redding, California. The property has a value of \$220,000 and is encumbered by claims totaling approximately \$267,893.24. The movant's deed is in first priority position and secures a claim of \$215,396.23.

The court concludes that there is no equity in the property 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 13, 2008. 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 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.

43. 08-27640-A-7 ERIC/SANDRA KANEKO HEARING - MOTION FOR
JMS #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE, LLC., VS. 7-14-08 [31]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered

and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Chase Home Finance, seeks relief from the automatic stay as to a real property in Manchester, Massachusetts. The property has a value of \$650,000 and is encumbered by claims totaling approximately \$749,508.21. The movant's deed is in first priority position and secures a claim of \$615,837.21.

The court concludes that there is no equity in the property 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 12, 2008. 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 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.

44. 07-25941-A-7 VOLKL AND SONS, INC. HEARING - MOTION FOR
TAA #4 ABANDONMENT OF ASSETS
8-8-08 [135]

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

The motion will be granted.

The trustee moves for abandonment of the estate's interest in a real property in Woodland, California. The property does not have realizable equity for the estate.

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

The property is subject to two undisputed encumbrances totaling approximately \$700,000 and one disputed lien in the amount of \$282,753. The trustee believes that, in order for the estate to realize any equity in the property, it must be sold for at least \$950,000. However, despite marketing the property since January of 2008, the trustee has received no offers. The most recent asking price for the property was \$1.1 million. In addition, the property has been subject to illegal dumping. Given the trustee's marketing efforts, given the encumbrances against the property, and given the dumping activities at the property, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

45. 08-29642-A-7 KATHY VARCOE-HECK HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-22-08 [5]

Tentative Ruling: The petition will be dismissed.

The debtor failed to file a statement of social security number with the petition as required by Fed. R. Bankr. P. 1007(f). This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

46. 07-28444-A-11 OCCMEDS BILLING SERVICES, HEARING - AMENDED MOTION OF
RSL #1 INC. GE CAPITAL INFORMATION TECHNOLOGY
SOLUTIONS, INC., FOR AN ORDER
(1) COMPELLING THE DEBTOR TO PAY
LEASE OBLIGATIONS AND (2)
ALLOWING, AND COMPELLING PAYMENT
OF, ADMINISTRATIVE EXPENSE CLAIM
6-24-08 [310]

Tentative Ruling: The parties have resolved the motion by stipulation. They nonetheless shall appear so the court can determine whether their stipulation must be noticed to creditors and approved as a compromise.

47. 06-24445-A-7 LESLEY KITZMILLER HEARING - APPLICATION FOR
MGO #2 APPROVAL AND PAYMENT OF
FINAL FEES, COSTS, AND EXPENSES
BY COUNSEL FOR TRUSTEE
(\$1,424.00 FEES; \$63.59 EXP.)
7-28-08 [60]

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

The application will be granted.

Oleksa Law Office, attorney for the trustee, has filed its first and final application for approval of compensation. The requested compensation consists of \$1,424 in fees and \$63.59 in expenses, for a total of \$1,487.59. This application covers the period from July 18, 2007 through July 16, 2008. The court approved the applicant's employment as the trustee's attorney on July 23, 2007. In performing its services, the applicant charged hourly rates of \$220 and \$235.

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) reviewing claims; (2) assisting the trustee in the recovery of trust funds; (3) preparing employment and compensation applications; and (4) assisting the trustee in the general administration of the case.

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

48. 06-24445-A-7 LESLEY KITZMILLER
MGO #3

HEARING - APPLICATION FOR
APPROVAL AND PAYMENT OF
FINAL FEES, COSTS, AND EXPENSES
BY ACCOUNTANT FOR TRUSTEE
(\$1,866.00)
7-28-08 [67]

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

The application will be granted.

Maria T. Stokman of Atherton & Associates, accountant for the trustee, has filed her first and final application for approval of compensation. The requested compensation consists of \$1,866 in fees and \$0.00 in expenses. This application covers the period from October 18, 2007 through May 9, 2008. The court approved the applicant's employment as the trustee's accountant on November 2, 2007. In performing its services, the applicant charged hourly rates of \$220 and \$230.

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 preparing tax returns and preparing a request for extension of the filing of tax returns.

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

49. 08-27648-A-7 JESSY ESIO
PPR #1
FIRST FRANKLIN FINANCIAL CORP., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-18-08 [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, First Franklin Financial Corporation, seeks relief from the

single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

The court has reviewed the dockets of the first and second cases and has confirmed that those cases were pending within the previous year of the filing of the instant case and that the court dismissed those previous cases. Accordingly, the motion will be granted, as the automatic stay did not go into effect upon the filing of the instant case on April 8, 2008.

51. 07-24050-A-7 LEE KEMP HEARING - MOTION TO
CJY #1 COMPEL CHAPTER 7 TRUSTEE TO
ABANDON PROPERTY OF THE ESTATE
7-22-08 [45]

Tentative Ruling: The motion will be denied.

The debtor moves for an order compelling the trustee to abandon the estate's interest in all nonexempt assets "and allow this case to close."

The trustee has filed a response, stating that he does not oppose abandonment of all assets disclosed on schedules A and B, as initially filed on July 2, 2007 and as amended on September 17, 2007. The trustee also states that he is in the process of investigating a pre-petition transfer from the debtor to his parents and that he may be soon filing a preference action.

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

First, the motion has not been served on all creditors as required by Fed. R. Bankr. P. 6007(a).

And second, the debtor has presented no evidence that any of the nonexempt assets are burdensome or of inconsequential value and benefit to the estate, as prescribed by section 554(b). The debtor merely argues that the trustee has done nothing to pursue nonexempt assets and that he has already obtained his discharge. However, this is not the standard of section 554(b). Regardless of whether the trustee opposes abandonment, the court has an independent obligation under section 554(b) to determine whether each asset is burdensome or of inconsequential value and benefit to the estate.

52. 08-26652-A-7 EILEEN MENDES HEARING - MOTION FOR
DGN #1 RELIEF FROM AUTOMATIC STAY
FORD MOTOR CREDIT CO., VS. 8-13-08 [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, Ford Motor Credit Co., seeks relief from the automatic stay with respect to a leased 2007 Mazda CX-7.

The debtor has not made two post-petition payments under the lease. This is cause for the granting of relief from stay. Further, the trustee filed a report of no distribution on July 21, 2008. The above facts make it unlikely that the trustee will attempt to assert any interest in the lease.

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.

53. 08-27152-A-7 RICHARD ROSE HEARING - MOTION FOR
APN #2 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A., VS 7-25-08 [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, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Parker, Arizona. The trustee filed a report of no distribution on July 9, 2008 and the debtor has indicated in the statement of intention an intent to surrender the property.

The court concludes that 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 property has a value of \$135,000 and is encumbered by claims totaling approximately \$119,407.02. The movant's lien is in second priority position and secures a claim of \$47,843.23.

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.

54. 08-24953-A-7 RUSSEL WETTLIN HEARING - MOTION FOR
SMR #1 REDEMPTION
7-25-08 [19]

Tentative Ruling: The motion will be denied.

The debtor seeks to redeem a 2007 Chevrolet HHR LT Sport. The debtor has alleged in a declaration that the Kelley Blue Book value of the vehicle is \$13,877. The debtor listed WFS/Wachovia Dealer Services as holding a secured claim in the approximate amount of \$29,309 in Schedule D.

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

However, the motion must be denied because the debtor has claimed no exemption in the vehicle. Absent an allowed exemption, the vehicle cannot be redeemed

pursuant to section 722. If section 722 is not applicable, this is merely an impermissible attempt to "lien strip" property in violation of the Supreme Court's ruling in Dewsnup v. Timm, 502 U.S. 410 (1992).

Further, the debtor's reference in the supporting declaration that the Kelley Blue Book value of the vehicle is \$13,877 is inadmissible hearsay because the debtor has not attached the Kelly Blue Book report for the vehicle. See Fed. R. Evid. 802. Hence, the court has no evidence of value for the vehicle.

Lastly, the proof of service for the motion shows that the debtor did not serve the creditor secured by the vehicle, WFS/Wachovia Dealer Services. See Schedule D.

The motion will be denied.

55. 08-26153-A-7 BARBARA BARACOSA HEARING - MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 8-1-08 [13]

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

The motion will be granted.

The movant, Wachovia Mortgage, seeks relief from the automatic stay as to a real property in Vacaville, California. The property has a value of \$311,000 and is encumbered by claims totaling approximately \$334,435.50. The movant's deed is in first priority position and secures a claim of \$301,015.50.

The court concludes that there is no equity in the property 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 19, 2008. 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 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.

56. 08-27853-A-7 JASON KHAMMANH HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-22-08 [16]

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, 2008. This is cause for dismissal. See 11 U.S.C. § 707(a) (1).

57. 08-27554-A-7 THOMAS/KATHLEEN BRUGGE HEARING - MOTION FOR
JMJ #1 RELIEF FROM AUTOMATIC STAY
KEYPOINT CREDIT UNION, VS. 8-4-08 [26]

Final Ruling: The motion will be dismissed without prejudice.

The movant has provided only 25 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion states that no party shall be heard in opposition to the motion if written opposition to the motion has not been timely filed. Motions set for hearing on less than 28 days of notice of the hearing are 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.

58. 08-28955-A-7 FARID KARIMI HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 7-30-08 [11]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Mountain House, California. The property has a value of \$423,000 and is encumbered by claims totaling approximately \$718,193.90. The movant's deed is in first priority position and secures a claim of \$632,693.90.

The court concludes that there is no equity in the property 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 8, 2008.

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

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

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

59. 08-29155-A-7 THOMAS WARD HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-28-08 [14]

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, Exhibit D with the credit counseling certificate, the statement of current monthly income and means test

calculation, schedules A through J, the statement of financial affairs, the statistical summary, and the summary of schedules, as required by Interim Rule 1007(b)(1)&(3), (c), 11 U.S.C. § 521(a), (b), and 11 U.S.C. § 707(b)(2)(C).

However, the debtor filed all missing documents on or about August 12, 2008. No prejudice has resulted from the delay.

60. 08-28456-A-7 JORGE INFANTE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-30-08 [18]

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

The court issued this order to show cause because the debtor did not file Exhibit D to the petition, the certificate of credit counseling, the statement of current monthly income and means test calculation, schedules A through J, the statement of financial affairs, the summary of schedules, and the statistical summary, as required by Interim Rule 1007(b)(1), (3), (c), 11 U.S.C. § 521(a), (b), and 11 U.S.C. § 707(b)(2)(C).

If an individual debtor in a voluntary chapter 7 case or in a chapter 13 case fails to file "all of the information required under" section 521(a)(1) [list of creditors, schedule of assets and liabilities, schedule of current income and current expenditures, statement of financial affairs with section 342(b) certificate, copies of employer payment advices, statement of monthly net income, statement of reasonably anticipated increases in income or expenditures] within 45 days of the filing of the petition, the case "shall be automatically dismissed effective on the 46th day." See 11 U.S.C. § 521(i)(1). The 45th day was August 9 and the missing documents had not been filed. Thus, the petition was automatically dismissed, effective August 10, the 46th day after the petition filing.

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

61. 08-28456-A-7 JORGE INFANTE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
8-4-08 [21]

Tentative Ruling: This order to show cause will be dismissed as moot because the case was automatically dismissed effective August 10, 2008. See Ruling on Order to Show Cause, Docket No. 18.

62. 08-29056-A-7 CHARLENE OLIN HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, NA., VS. 7-15-08 [7]

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

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

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Folsom, California. The property has a value of \$325,000 and is encumbered by claims totaling approximately \$454,876.09. The movant's deed is in first priority position and secures a claim of \$365,622.09.

The court concludes that there is no equity in the property 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 13, 2008.

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

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

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 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. 07-31157-A-7 ALIZAH/AARON TEJERO HEARING - MOTION FOR
APN #1 RELIEF FROM AUTOMATIC STAY
NISSAN-INFINITI, LT, VS. 7-30-08 [48]

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, Nissan-Infinity, LT, seeks relief from the automatic stay with respect to a leased 2007 Infinity QX56.

The debtor has not made three post-petition payments to the movant on account of the lease. This is cause for the granting of relief from stay. Further, the trustee filed a report of no distribution on August 5, 2008. The above facts make it unlikely that the trustee will attempt to assert any interest in the lease.

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.

64. 08-28757-A-7 CATHERINE PARDUE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
8-5-08 [13]

Tentative Ruling: The petition will be dismissed.

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The first installment fee in the amount of \$75 due on July 31, 2008 has not been paid. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

65. 08-30357-A-11 RIVER RUN COVE LAND HEARING - MOTION FOR
BRL #1 DEVELOPMENT CO., INC. RELIEF FROM AUTOMATIC STAY ETC
RICHARD/JUDY KASH, ET AL., VS. 8-8-08 [25]

Tentative Ruling: The motion will be denied.

The movant, Richard and Judy Cash and Palatine, LLC, seeks relief from the automatic stay as to five acres of land in Anderson, California. The movant contends that the value of the property is between \$1,000,000 and \$1,400,000 based on a Preliminary Site Assessment. But, the Site Assessment 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, Ken Miller. See Fed. R. Evid. 802, 901(a).

Further, the debtor has scheduled the property with a value of \$2,635,000. The claims encumbering the property total \$2,318,627. The movant's lien is in first priority position, securing a claim of \$1,926,856. This leaves approximately \$316,373 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 \$708,144. This equity cushion is sufficient to adequately protect the movant's interest in the property until the debtor confirms a plan. 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.

66. 08-25358-A-7 MICHAEL/DANAE MCGOWAN HEARING - MOTION FOR
PLG #1 REDEMPTION
7-18-08 [25]

Tentative Ruling: The motion will be denied.

The debtor seeks to redeem a 2007 Hyundai Elantra with approximately 5,800 miles in good condition. The private party Kelley Blue Book value of the vehicle is \$11,875. The debtor listed Heritage Community Credit Union as holding a secured claim in the approximate amount of \$20,196 in Schedule D.

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

However, the motion must be denied because the debtor has claimed no exemption in the vehicle. Absent an allowed exemption, the vehicle cannot be redeemed pursuant to section 722. If section 722 is not applicable, this is merely an impermissible attempt to "lien strip" property in violation of the Supreme Court's ruling in Dewsnup v. Timm, 502 U.S. 410 (1992).

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

The value suggested by the debtor is the value for which a private party could buy or sell the car. This is not the replacement value as defined in section 506(a)(2). The motion will be denied.

67. 08-27259-A-7 MARCELLUS TERRY HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 7-17-08 [15]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for

First National Lending Services, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$359,963 and is encumbered by claims totaling approximately \$449,908.50. The movant's deed is in first priority position and secures a claim of \$359,962.50.

The court concludes that there is no equity in the property 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, 2008.

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

The 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.

68. 08-27661-A-7 STEPHAN KRISTY
KAT #1
FIRST HORIZON HOME LOANS, ET AL., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-25-08 [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, First Horizon Home Loans, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$350,000 and is encumbered by claims totaling approximately \$435,603.89. 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 \$351,603.89.

The court concludes that there is no equity in the property 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 18, 2008. 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.

69. 08-29562-A-7 ALBERT/YELENA VARLAMOV

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
8-6-08 [10]

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 did not 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 Interim 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 13, 2008. No prejudice has resulted from the delay.

70. 08-30563-A-7 JANETH TILLOTSON HEARING - MOTION FOR
HM #2 RELIEF FROM AUTOMATIC STAY ETC
UMPQUA BANK, VS. 8-13-08 [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, Umpqua Bank, seeks relief from the automatic stay as to a real property in Georgetown, California. The movant has produced evidence that the property has a value of \$445,000 and is encumbered by claims totaling approximately \$466,161.89. The movant's deed is the only encumbrance against the property.

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

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

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

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

71. 08-27764-A-7 JOE/CHRISTINA GUERRERO HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 7-16-08 [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

of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

A review of the debtor's schedules shows that the tractor, valued at \$12,000, is over-encumbered with a claim of \$18,000. Also, the trailer is fully exempt. See Amended Schedule C. Given this, the court concludes that the business is of inconsequential value to the estate. The motion will be granted.

73. 08-27964-A-7 ARNOLD/KRISTI LAL HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WASHINGTON MUTUAL BANK, VS. 8-4-08 [22]

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, Washington Mutual Bank, seeks relief from the automatic stay as to a real property in Elk Grove, California. The property has a value of \$343,000 and is encumbered by claims totaling approximately \$506,129.51. The movant's deed is in first priority position and secures a claim of \$370,001.51.

The court concludes that there is no equity in the property 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, 2008. 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.

Tentative Ruling: The motion will be granted.

The trustee seeks approval of a settlement agreement between the estate on one hand and Frank Assali, Marie Assali, Michael Staack, Christina Staack, Assali Hulling & Shelling, Inc., California Grown Nut Company, and Assali Farm Properties, LP on the other hand, who are the defendants in an adversary proceeding instituted by the trustee. The court already ruled in favor of the trustee in the adversary proceeding, awarding damages in the amount of \$198,205.42, plus attorney's fees, and declaring that the estate has 12.75% interest in two corporations, California Grown Nut Company and Assali Hulling & Shelling, Inc. The trustee has a pending application for attorney's fees in the amount of \$100,000 before this court. Under the terms of the compromise, the defendants will pay \$317,000 in cash to the estate in full satisfaction of all known and unknown claims. In addition, the trustee will dismiss the adversary proceeding.

Creditor Carmen Sabatino has filed a letter, telling the court that he opposes the compromise, and asking the court to set a hearing on the motion. However, a hearing has been scheduled on the motion and the deadline for opposition was 14 days prior to the August 29, 2008 hearing.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the continuing dispute over the trustee's attorney's fees, given that the trustee's 12.75% interest in the two defendant corporations is not sufficient to allow him to prosecute a dissolution action, given that the trustee's investigation shows that the value of the two corporations is between \$10,000 and \$50,000 each, and given the costs and delay of further litigation, the court concludes that the settlement is equitable and fair.

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

As to Sabatino's response, any opposition he may have had against approval of the compromise should have been briefed. Simply stating that he opposes the compromise, without actually stating his opposition, is not an opposition. Also, at the time Sabatino filed his response on August 14, 2008, the application was already set for a hearing. The court did not and does not set

hearings on compromise approval applications.

75. 08-27965-A-7 ALEJANDRA GARCIA HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
CITI RESIDENTIAL LENDING, INC., VS. 7-16-08 [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, Citi Residential Lending, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$208,000 and is encumbered by claims totaling approximately \$317,603.58. The movant's deed is in first priority position and secures a claim of \$250,152.58.

The court concludes that there is no equity in the property 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, 2008. 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.

76. 08-28665-A-7 NAOMI/LAMAR SIDONER HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-31-08 [14]

Final Ruling: This order to show cause will be dismissed as moot because the case was dismissed on August 13, 2008.

77. 08-23466-A-7 MARK/TAMMY SIRMANS
PAK #1

HEARING - MOTION TO
EXTEND THE TIME FOR FILING
COMPLAINT OBJECTING TO
DISCHARGEABILITY OF DEBT
6-30-08 [42]

Tentative Ruling: The motion will be denied.

Creditor Western Wood Fabricators moves for a 90-day extension, to September 28, 2008, of the deadline for determining the dischargeability of debts under 11 U.S.C. § 523 respectively. June 30, 2008 is the date for the deadline. WWF seeks the extension to do discovery, including a 2004 exam of the debtors, on whether they received payment from a co-defendant in a pending state court action in instituted by WWF, of money that were due to WWF.

The debtors oppose the motion, arguing that cause for the extension does not exist because WWF has had ample opportunity to conduct the referenced discovery, including a 2004 exam of the debtors.

Interim Bankruptcy Rule 4007(c) provides that the court may extend the deadline for filing 11 U.S.C. § 523 complaints for cause. The motion must be filed before the deadline expires. The deadline for filing 11 U.S.C. § 523 complaints here was June 30, 2008. The instant motion was filed on June 30, 2008. Thus, the motion complies with the temporal requirements of the rule.

However, WWF has not established cause for the extension. According to the supporting declaration of James Pagano, WWF learned of the potential payment by the co-defendant in May of 2007. And, WWF refers to only one instance of propounding discovery on the debtors, in or about May of 2007. See Declaration of James Pagano at ¶3. This was more than one year before the filing of the instant motion. WWF has produced no evidence of attempting to propound or conduct any discovery in the past one year, here or in state court. The court finds then that WWF has had ample opportunity to conduct discovery, including a 2004 exam of the debtors, on whether they received payment from a co-defendant. And, WWF has presented no justification or excuse for not conducting such discovery within the last one year. For instance, WWF did not attend the debtors' meeting of creditors on April 30, 2008.

Given the foregoing, the motion will be denied.

78. 08-26766-A-7 TIMOTHY/HEATHER MIKULIN
MBB #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-22-08 [15]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Wilton, California. The property has a value of \$600,000 and is encumbered by claims totaling approximately \$817,159.30. The movant's deed is in first priority position and secures a claim of \$745,781.54.

The court concludes that there is no equity in the property 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, 2008.

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

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

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

79. 08-23769-A-7 RENATO/JULIANA OINEZA HEARING - VERIFIED MOTION FOR
RJH #1 ORDER ABANDONING REAL PROPERTIES
7-14-08 [21]

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 abandonment of the estate's interest in two real properties, on Keswick Way in Sacramento, California and on Kranhold Way in Sacramento, California. The properties are either over-encumbered or do not have sufficient equity warranting administration.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate. The property on Keswick Way is valued at \$296,000, with secured claims totaling \$297,000. The property on Kranhold Way is valued at \$240,000, with secured claims totaling \$227,000. Given the scheduled values of and encumbrances against the properties, the court concludes that both properties are of inconsequential value to the estate. The motion will be granted.

80. 08-23769-A-7 RENATO/JULIANA OINEZA HEARING - MOTION FOR
TF #1 ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE CLAIM
7-31-08 [27]

Tentative Ruling: The motion will be denied.

Creditor Laguna Promenade, LLC moves for the allowance of an administrative expense claim for the debtor's post-petition operation of a business at a commercial premises in Elk Grove, California.

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

81. 08-23769-A-7 RENATO/JULIANA OINEZA HEARING - TRUSTEE'S OBJECTION TO
RJH #2 CLAIMED EXEMPTION OF ANNUITY
CONTRACT
8-13-08 [30]

Tentative Ruling: The objection will be overruled.

The trustee objects to the debtors' claim of exemption pursuant to Cal. Code Civ. Proc. § 703.140(b)(10)(E) of a \$10,000 annuity contract held by Debtor Juliana Oineza because the annuity was not funded by Juliana Oineza's employer, but by funds from the refinance of the debtors' residence.

Cal. Code Civ. Proc. § 703.140(b)(10)(E) provides for the following exemption: "A payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply: (i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time of the debtor's rights under the plan or contract arose."

While the motion alleges that the annuity at issue was funded by the refinance of the debtors' residence, the trustee filed no evidence, such as a declaration or an affidavit, to support the objection's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides that "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with FRCivP 56(e)." Accordingly, the objection will be overruled.

82. 08-28969-A-7 TIA YANG AND YOUA VANG HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE INC., VS. 7-16-08 [9]

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

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

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$175,000 and is encumbered by claims totaling approximately \$284,323.85. The movant's deed is in first priority position and secures a claim of \$182,443.85.

The court concludes that there is no equity in the property 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 12, 2008. 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.

83. 08-30470-A-7 TERRY/LEOLA HIGGINBOTHOM HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
8-1-08 [5]

Final Ruling: This order to show cause will be dismissed as moot because the case was already dismissed on August 13, 2008.

84. 05-25871-A-7 TOM/GAYLE TIETJEN HEARING - DEBTORS' MOTION FOR RECONSIDERATION OF ORDER
HWW #3 DISMISSING DEBTORS' MOTION TO REDEEM COLLATERAL OF HSBC AUTO FINANCE
7-22-08 [57]

Tentative Ruling: The motion for reconsideration will be granted but the motion to redeem nonetheless will be denied.

The debtor moves for reconsideration of this court's June 24 order dismissing the debtor's motion to redeem a 2001 Kia Spectra.

The court dismissed the motion to redeem on the basis that it was not served at the correct address for the secured creditor, HSBC Auto Finance. The debtor had served HSBC at P.O. Box 60130 City of Industry, California 91716-0130, whereas the address on HSBC's proof of claim was different. However, HSBC had filed a change of address on December 20, 2007, stating that its new address is P.O. Box 60130 City of Industry, California 91716-0130. Given this, the court concludes that the motion to redeem was properly served on HSBC. The motion for reconsideration will be granted.

Turning to the merits of the motion to redeem, the debtor seeks to redeem a 2001 Kia Spectra for \$2,570.76, representing the valuation of the vehicle during the chapter 13 portion of the case minus funds paid through the debtor's chapter 13 plan (i.e., \$5,225 minus \$2,654.24). The debtor moves the court to declare that the redemption value of the vehicle is \$2,570.76.

Pursuant to 11 U.S.C. § 722 a 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.

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

Also, the debtor has cited no authority allowing him to apply prior chapter 13 plan payments toward a redemption payment. The debtor listed HSBC in Schedule D as holding a claim secured by the vehicle, in the amount of \$11,990. Any payments made under a chapter 13 plan were made on account of HSBC's claim as of the petition date and not on account of a redemption payment. Accordingly, the motion to redeem will be denied.

85. 08-28871-A-7 JAMES/TERRI SHELTON HEARING - MOTION FOR
BSN #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 7-30-08 [9]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay with respect to an already surrendered 2007 Chevrolet Silverado 1500. The vehicle has a value of \$21,480 and its secured claim is approximately \$27,933.09. 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 August 13, 2008. And, the debtor surrendered the vehicle to the movant pre-petition, in June 2008. See Statement of Financial Affairs, item #5. This is cause for the granting of relief from stay.

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

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

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

86. 08-29172-A-7 ADELA ORDONA HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-28-08 [8]

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

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

If an individual debtor in a voluntary chapter 7 case or in a chapter 13 case fails to file "all of the information required under" section 521(a)(1) [list of creditors, schedule of assets and liabilities, schedule of current income and current expenditures, statement of financial affairs with section 342(b) certificate, copies of employer payment advices, statement of monthly net income, statement of reasonably anticipated increases in income or expenditures] within 45 days of the filing of the petition, the case "shall be automatically dismissed effective on the 46th day." See 11 U.S.C. § 521(i)(1). The 45th day was August 22 and the missing documents had not been filed. Thus, the petition was automatically dismissed, effective August 23, on the 46th day of the petition filing.

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

87. 08-29572-A-7 LUCILLE CASAZZA HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-23-08 [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 25, 2008. Because no master address list has been filed, the notice was not served on all creditors. As a result, they were not notified that the case had been filed nor did they receive notice of the various deadlines for, among other things, filing complaints, objecting to exemptions, and filing proofs of claims. To permit the case to remain pending would be unfair to all creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

88. 08-30973-A-7 ELIZABETH/MARGARITO ROBLES HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
8-11-08 [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 did not pay the petition filing fee of \$299, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments.

However, the debtor paid the fee in full on August 11, 2008. No prejudice has resulted from the delay.

89. 08-23976-A-7 DARLENE JOHNSON HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
INDYMAC BANK, VS. 7-31-08 [24]

Tentative Ruling: Although the movant has given 29 days' notice of the hearing, the court will deem the motion to be brought pursuant to Local Bankruptcy Rule 9014-1(f)(2) because the notice of hearing does not require written opposition before the hearing and invites oppositions to be presented at the hearing. 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, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Sacramento, California.

Given the entry of the debtor's discharge on July 22, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of \$258,500 and is encumbered by claims totaling approximately \$331,912.47. The

movant's deed is in first priority position and secures a claim of \$253,385.54.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on May 12, 2008.

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 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.

90. 08-29176-A-7 MARY MASON HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, VS. 8-5-08 [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, GMAC Mortgage, seeks relief from the automatic stay as to a real property in Citrus Heights, California. The property has a value of \$238,000 and is encumbered by claims totaling approximately \$283,218.72. 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 19, 2008.

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

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

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

91.	08-27377-A-7 MARGIE TAMAYO MDM #1	HEARING - REQUEST FOR RECONSIDERATION OF ORDER GRANTING WAIVER OF FILING FEE 7-23-08 [15]
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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 and the court will deny the debtor's application for waiver of the filing fee.

The trustee moves the court to reconsider its June 9, 2008 order waiving the filing fee, on the grounds that the debtor has full time employment as a school

teacher now and, according to her testimony at the meeting of creditors, she is able to pay the filing fee. Given these new facts, the court will grant the trustee's motion to reconsider the waiver. And, in light of the debtor's ability to pay the filing fee, the application for waiver of the filing fee will be denied. The debtor shall have 30 days to pay the filing fee in full.

92. 08-29377-A-7 MANDEEP/MONICA SINGH HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE, INC., VS. 7-23-08 [9]

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

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Lincoln, California.

The property has a value of \$299,500 and is encumbered by claims totaling approximately \$370,538.40. 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 \$300,117.40.

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

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

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

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

93. 05-38678-A-7 GARNAS & RABE CONSTRUCTION HEARING - MOTION FOR
SHR #1 RELIEF FROM AUTOMATIC STAY
JOHN MOURIER CONSTRUCTION, INC., VS. 8-1-08 [142]

Final Ruling: The motion will be dismissed without prejudice because it was not served upon the debtor, the debtor's attorney, and the chapter 7 trustee. Service is deficient.

94. 05-38678-A-7 GARNAS & RABE CONSTRUCTION HEARING - MOTION FOR
MCG #4 RELIEF FROM AUTOMATIC STAY
WINNCREST HOMES, INC., VS. 7-31-08 [136]

Tentative Ruling: Although the movant has given 29 days' notice of the hearing, the court will deem the motion to be brought pursuant to Local Bankruptcy Rule 9014-1(f)(2) because the notice of hearing does not require written opposition before the hearing and invites oppositions to be presented at the hearing. 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, Winncrest Homes, Inc., seeks relief from the automatic stay to proceed with its state court cross-complaint for indemnity, contribution, negligence, breach of contract, declaratory relief, and breach of warranties against the debtor. Recovery will be limited to available insurance coverage, if any.

Given that the movant would not seek to enforce any judgments against the debtor and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims in its cross-complaint against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

The parties shall bear their own fees and costs.

95. 08-26278-A-7 NHAI MOUA AND MAY LO HEARING - MOTION FOR
JMS #1 RELIEF FROM AUTOMATIC STAY
CITI RESIDENTIAL LENDING, INC., VS. 7-22-08 [21]

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

The motion will be granted.

The movant, Citi Residential Lending, Inc., seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value

98. 08-28281-A-7 JOSEPH JENKINS

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
8-4-08 [24]

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

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The first installment fee in the amount of \$100 due on July 30, 2008 was not paid.

However, the debtor paid the entire filing fee on August 19, 2008. No prejudice has resulted from the delay.

99. 08-27782-A-7 RICHARD/JACQUELINE SCHIES
TJS #1
GREENPOINT MORTGAGE FUNDING, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-5-08 [21]

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

The motion will be granted.

The movant, Greenpoint Mortgage Funding, Inc., seeks relief from the automatic stay as to a real property in Live Oak, California. The property has a value of \$162,500 and is encumbered by claims totaling approximately \$215,480.88. The movant's deed is in first priority position and secures a claim of \$158,238.73.

The court concludes that there is no equity in the property 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 24, 2008. 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 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.

100. 08-29782-A-7 ALBERTO FILIO

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-25-08 [4]

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 27, 2008. Because no master address list has been filed, the notice was not served on all creditors. As a result, they were not notified that the case had been filed nor did they receive notice of the various deadlines for, among other things, filing complaints, objecting to exemptions, and filing proofs of claims. To permit the case to remain pending would be unfair to all creditors. This is cause for dismissal. See 11 U.S.C. § 707(a) (1).

101. 08-29782-A-7 ALBERTO FILIO HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-25-08 [5]

Tentative Ruling: The petition will be dismissed.

The debtor failed to file a statement of social security number with the petition as required by Fed. R. Bankr. P. 1007(f). This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

102. 08-28983-A-7 ROBERT OKUMURA HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-22-08 [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 did not file an attorney's disclosure statement, Exhibit D with the credit counseling certificate, the statement of current monthly income and means test calculation, schedules A through J, the statement of financial affairs, the statistical summary, and the summary of schedules, as required by Interim Rule 1007(b)(1)&(3), (c), 11 U.S.C. § 521(a), (b), and 11 U.S.C. § 707(b)(2)(C).

However, the debtor filed all missing documents on August 8, 2008. No prejudice has resulted from the delay.

103. 08-26084-A-7 CLODOALDO/FABIOLA ANTEMATE HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WASHINGTON MUTUAL BANK, VS. 7-30-08 [16]

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

The motion will be granted.

The movant, Washington Mutual Bank, seeks relief from the automatic stay as to a real property in Manteca, California. The property has a value of \$240,000 and is encumbered by claims totaling approximately \$468,373.29. The movant's deed is in first priority position and secures a claim of \$349,117.

The court concludes that there is no equity in the property 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 19, 2008. 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.

104. 08-27384-A-7 VERNON LANDRY
PD #1
U.S. BANK NATIONAL ASSN., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-18-08 [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, U.S. Bank National Association, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$416,000 and is encumbered by claims totaling approximately \$527,356.88. The movant's deed is in first priority position and secures a claim of \$430,767.88.

The court concludes that there is no equity in the property 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, 2008. 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.

105. 08-28184-A-7 JOHN BROWN, JR. AND HEARING - MOTION FOR
PD #1 JACQUELINE MCDANIELS RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MORTGAGE, ETC., VS. 7-23-08 [16]

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

The motion will be granted.

The movant, National City Mortgage, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$250,000 and is encumbered by claims totaling approximately \$354,970.54. The movant's deed is in first priority position and secures a claim of \$317,283.54.

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

106. 08-28184-A-7 JOHN BROWN, JR. AND HEARING - MOTION TO
MDM #1 JACQUELINE MCDANIELS ABANDON REAL PROPERTY
7-29-08 [23]

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 to abandon the estate's interest in seven real properties. All of the properties are over-encumbered.

11 U.S.C. § 554(a) provides that a trustee may abandon any estate property that is burdensome or of inconsequential value or benefit to the estate, after notice and a hearing. Based on the trustee's investigation, the values and encumbrances against the properties are summarized as follows:

- (1) Real property in Tracy, California has a value \$1.25 million and its encumbrances total \$1,490,102;
- (2) Real property in Tracy, California has a value \$495,000 and its encumbrances total \$573,401;
- (3) Real property in Stockton, California has a value \$250,000 and its encumbrances total \$341,681;
- (4) Real property in Baton Rouge, Louisiana has a value \$95,000 and its encumbrances total \$105,235;
- (5) Real property in Citrus Springs, Florida has a value \$135,000 and its encumbrances total \$179,150;
- (6) Real property in Tampa, Florida has a value \$235,000 and its encumbrances total \$279,145; and
- (7) Real property in Kapolea, Hawaii has a value \$435,000 and its encumbrances total \$487,796.

Given the values of and encumbrances against the properties, the court concludes that they are of inconsequential value to the estate. The motion will be granted.

107. 08-28184-A-7 JOHN/JACQUELINE BROWN HEARING - MOTION FOR
PPR #1 RELIEF FROM AUTOMATIC STAY
GREENPOINT MORTGAGE FUNDING, INC., VS. 7-31-08 [27]

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

The motion will be granted.

The movant, Greenpoint Mortgage Funding, Inc., seeks relief from the automatic stay as to a real property in Tracy, California. The property has a value of \$495,000 and is encumbered by claims totaling approximately \$594,103.82. The movant's deed is in first priority position and secures a claim of \$460,887.82.

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

108. 08-29484-A-7 KEITH/HEATHER GIACOMO HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 7-28-08 [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, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in El Dorado, California. The property has a value of \$450,000 and is encumbered by claims totaling approximately \$482,451.51. The movant's deed is in first priority position and secures a claim of \$432,401.51.

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

109. 08-30984-A-7 DAWN HUNT

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
8-11-08 [6]

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

The debtor did not pay the petition filing fee of \$299, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments.

However, the fee was paid in full on August 12, 2008. No prejudice has resulted from the delay.

110. 07-30685-A-7 IDM, INC.
PP #2

HEARING - MOTION OF
CHAPTER 7 TRUSTEE TO APPROVE
ADMINISTRATIVE CLAIM
8-1-08 [205]

Tentative Ruling: The motion will be denied.

The trustee seeks the approval of an administrative expense claim in favor of Todd Vowell, for his payment of \$4,000 to the debtor's counsel to file a timely response to the rejection of the trademark registration for "Phone Auto Loan" by the U.S. Patent Trademark Office, preserving the estate's claim to the mark. The trustee asserts that the mark is property of the estate.

The petitioning creditors have filed a response, stating that they do not oppose approval of the administrative expense claim as long as "the appeal of the trademark registration is successful."

11 U.S.C. § 503(b) provides that "after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1) (A) the actual, necessary costs and expenses of preserving the estate."

The timely response filed by the debtor's counsel to the rejection of the trademark registration for PAL has probably preserved the estate's claim to the mark. This means that the estate would realize a benefit on its claim to the mark only if and when it is successful on the claim.

However, section 503(b)(1)(A) does not include potential benefits. It includes only actual benefits that are "measurable in assets distributable to creditors, or the elimination of claims which would otherwise require creditors to share the assets with others." In re Lazar, 207 B.R. 668, 685 (Bankr. C.D. Cal. 1997); see also In re Drexel Burnham Lambert Group, Inc., 134 B.R. 482, 488 (Bankr. S.D.N.Y. 1991). Preserving a contingent and unliquidated claim for the benefit of the estate is not sufficient to qualify as an administrative expense under section 503(b)(1)(A). Thus, the motion will be denied without prejudice.

111. 08-26285-A-7 OLEKSANDR VASYLYUK AND
MARINA NIKULINA

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
8-7-08 [29]

Tentative Ruling: The petition will be dismissed.

An order to show cause was issued because both debtors failed to attend a meeting of creditors scheduled for and held on August 6, 2008 as required by 11 U.S.C. § 343. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

112. 08-28286-A-7 HAROLD/JENNIFER GARELLO HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WASHINGTON MUTUAL BANK, VS. 7-30-08 [21]

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

The motion will be granted.

The movant, Washington Mutual Bank, seeks relief from the automatic stay as to a real property in Vacaville, California. The property has a value of \$850,000 and is encumbered by claims totaling approximately \$922,385.19. The movant's deed is in first priority position and secures a claim of \$830,184.19.

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

113. 08-20087-A-11 GERALD FILICE
UST #11

HEARING - MOTION OF U.S. TRUSTEE
FOR ORDER CONVERTING OR DISMISSING
CASE
7-18-08 [57]

Tentative Ruling: The motion will be granted.

The U.S. Trustee seeks dismissal or conversion to a chapter 7 proceeding, pursuant to Section 1112(b), on the grounds that:

- (1) the debtor is delinquent \$325 on paying quarterly fees to the U.S. Trustee;
- (2) the debtor's operating report for June 2008 is outstanding;
- (3) the debtor's filed operating reports do not include the required bank statements, reconciliations, and check registers;
- (4) the filed reports do not contain sufficient information about how the debtor spends his income;
- (5) the information from one report to another is inconsistent;
- (6) the debtor has not yet filed a disclosure statement or plan, despite the July 1 deadline set by the court; and
- (7) the debtor's income has been significantly less than the income listed in Schedule I and the expenses projected in Schedule J, indicating a continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation.

The debtor opposes the motion, alleging that: (a) he has filed all outstanding tax returns; (b) the FTB has accepted the returns and has liquidated their claim to \$35,427.80; (c) the IRS has not liquidated the federal tax claims, pending an audit of most tax returns; and (d) his real property has sufficient equity to protect all creditors while the federal tax claims are liquidated. Also, the debtor admits the plunge of his income, the shortfalls of his operating reports, and the failure to pay quarterly fees to the U.S. Trustee.

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- (A) substantial or continuing loss to or diminution of the estate and the

absence of a reasonable likelihood of rehabilitation; . . . (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) (A) & (F) .

The debtor has admitted that his income "has been low" and has admitted of shortfalls in his operating reports. His average monthly income of \$3,615.20 is far below his monthly expenses in Schedule J of \$12,110. And, he "has not been able to retain a professional to present the appropriate monthly accountings." The debtor waits for the liquidation of the federal tax claims, but without making any efforts to raise cash for the funding of a plan. This amounts to continuing diminution of the estate. The debtor has no prospect of reorganization, then, even if he refiles the operating reports. Hence, the court concludes that cause for dismissal or conversion exists.

Further, the debtor owns a real property valued at \$800,000, with encumbrances totaling only approximately \$162,000. While dismissal may lead to the liquidation of that property, such liquidation would be more likely than not for the benefit of one or two creditors, rather than all creditors. On the other hand, liquidation of the property in chapter 7 would also ensure the orderly administration of all creditor claims. In light of this, the court concludes that conversion to chapter 7 would be in the best interest of the creditors. The motion will be granted.

114. 08-27487-A-7 KATHY TKACHUK HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, LLC, VS. 7-15-08 [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, Aurora Loan Services, seeks relief from the automatic stay as to a real property in Roseville, California. The property has a value of \$280,000 and is encumbered by claims totaling approximately \$356,001.61. 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, 2008. 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.

115. 08-28487-A-11 ROOM SOURCE LLC HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
7-22-08 [77]

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 did not file an attorney's disclosure statement and a statement regarding ownership of corporate debtor.

The debtor has filed a response, indicating that the attorney's disclosure statement was originally filed on July 7, an amended disclosure statement was filed on July 28, and the statement regarding ownership of corporate debtor was filed on July 25, 2008. A review of the case docket confirms this.

116. 08-28487-A-11 ROOM SOURCE LLC HEARING - MOTION OF U.S. TRUSTEE
UST #2 FOR MODIFICATION OF ORDER
AUTHORIZING SALES
7-24-08 [85]

Tentative Ruling: The motion will be denied.

The U.S. Trustee moves for modification of this court's June 30, 2008 order, authorizing sales outside the ordinary course of business, DCN SS-1, seeking a clarification that augmentation of the debtor's inventory during any store liquidation/going out of business sale is not approved and is disallowed in violation of Cal. Code Regs. Title 4, Div. 3, Art. 10, Section 1312. The U.S. Trustee argues that the current language of the order "gives the false impression that there might be some way in which augmentation of inventory during a store closing/going out of business sale could occur in compliance with applicable non-bankruptcy laws, when in fact it is expressly prohibited by ... Cal. Code Regs. Title 4, Div. 3, Art. 10, Section 1312."

The debtor objects to the motion, arguing that the regulation does not per se ban augmentation. It bans augmentation only when advertisements of a closing/going out of business sale are in place.

Paragraph 2 of the June 30 order states that "Augmentation of the Debtor's inventory during the store closing/going out of business sales in compliance with applicable non-bankruptcy laws (including consumer protection and deceptive trade practices laws) is approved."

4 Cal. Code Regs. § 1312 provides that:

"No advertisement shall represent or imply, by means of the term 'Going Out of

Business,' 'Selling Out,' 'Closing Out,' 'Liquidating,' or any term of similar import, that the advertiser is going out of business, or is disposing of all or a portion of a stock of merchandise, unless such representation is true and is not in any respect misleading as to the advertiser's discontinuing business or as to the types and quantity of merchandise intended to be included, and unless the articles offered for sale, and to be sold, during the sale are restricted to those articles on the premises or in transit from previous orders the date the sale is announced. A mere change of business location, business name or type of business entity does not constitute going out of business within the meaning of this section."

The motion will be denied as it is untimely under Fed. R. Civ. P. 59(e), as made applicable here by Fed. R. Bankr. P. 9023, which requires motions to alter or amend judgments to be filed within 10 days after entry of the judgment. Here, the order at issue was entered on June 30, whereas the motion was not filed until July 24, approximately 24 days after entry of the order.

Moreover, the order expressly states that only augmentation in compliance with applicable non-bankruptcy law is approved. Augmentation not that is not in compliance with applicable nonbankruptcy law has not approved by the court's order. This includes the regulation cited by the U.S. Trustee. The motion will be denied.

117. 08-28487-A-11 ROOM SOURCE LLC HEARING - DEBTOR'S MOTION TO
SS #7 REJECT NON-RESIDENTIAL LEASES
(RANCHO CORDOVA AND ROCKLIN)
8-19-08 [121] O.S.T.

Tentative Ruling: The motion will be granted.

The debtor seeks to reject two non-residential real property leases, of its stores in Rocklin, California and Rancho Cordova, California. The Rocklin lease terminates in or about July 2014 and the monthly rent is approximately \$60,000. The Rancho Cordova lease terminates in or about August 2018 and the monthly rent is approximately \$62,000. The debtor has determined that closure of the two stores is in best interest of the estate, given current market conditions in the industry.

Section 1107(a) provides that a debtor-in-possession shall have all rights, powers, and shall perform all functions and duties of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's rights and powers under section 365(a).

Section 365(a) provides that, subject to court approval, the trustee may assume or reject any executory contract or unexpired lease of the debtor.

Given that the debtor has determined that the leases are unprofitable and are not beneficial to its operations, the court concludes that rejection of the leases is in the best interest of the estate. Accordingly, the motion will be granted.

118. 08-27788-A-7 VERA GOEGLEIN HEARING - MOTION FOR
SMR #1 REDEMPTION
7-25-08 [13]

Tentative Ruling: The motion will be denied.

The debtor seeks to redeem a 2004 Ford Freestar by paying \$6,414. The debtor listed Bank of America as holding a secured claim in the approximate amount of \$15,610 in Schedule D.

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

But, the motion must be denied because the debtor claimed no exemption in the vehicle. Absent an allowed exemption, the vehicle cannot be redeemed pursuant to section 722. If section 722 is not applicable, this is merely an impermissible attempt to "lien strip" property in violation of the Supreme Court's ruling in Dewsnup v. Timm, 502 U.S. 410 (1992).

Further, the vehicle must be valued at its replacement value. In the chapter 7 case of an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined. However, the debtor has presented no evidence about the condition of the vehicle, even though the Kelly Blue Book printout accounts for a "Condition Adjustment."

Given the foregoing, the motion will be denied.

119. 08-28088-A-7 LENNIE/JACKIE MCLAIN HEARING - MOTION FOR
ND #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 8-4-08 [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, Bank of America, seeks relief from the automatic stay as to a real property in Colusa, California. The property has a value of \$320,000 and is encumbered by claims totaling approximately \$381,512.11. The movant's deed is in second priority position and secures a claim of \$42,878.98.

The court concludes that there is no equity in the property 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, 2008. 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.

120. 08-25789-A-7 SHERIE ABEL, VS. HEARING - MOTION FOR
DKC #1 ORDER TO AVOID LIEN
UNIFUND CCR PARTNERS 7-30-08 [15]

Tentative Ruling: The motion will be denied.

A judgment was entered against the debtor in favor of Unifund CCR Partners for the sum of \$8,791.10 on December 5, 2006. The abstract of judgment was recorded with Tehama County on December 22, 2006. That lien attached to the debtor's real property in Corning, California.

The debtor moves to avoid the lien on the real property pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to 11 U.S.C. § 522(f)(1)(A), the debtor may avoid the fixing of a judicial lien to the extent the lien impairs an exemption. However, the debtor has not demonstrated that she is entitled to the claimed exemption of \$150,000. See Schedule C.

As established in In re Mohring, 142 B.R. 389 (Bankr. E.D. Cal. 1992), *affirmed*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *affirmed*, 24 F.3d 247 (9th Cir. 1994), it is not enough to show that an exemption was claimed on Schedule C without objection. To avoid a judicial lien, the debtor must prove entitlement to the exemption. Because there is no evidence on this issue, the burden has not been satisfied.

Lastly, the debtor did not serve the respondent creditor Unifund CCR Partners. Instead, the proof of service shows that the debtor served Sherman Acquisitions. The motion will be denied.

121. 08-25789-A-7 SHERIE ABEL, VS. HEARING - MOTION FOR
DKC #2 ORDER TO AVOID LIEN
UNIFUND CCR PARTNERS 7-30-08 [20]

Tentative Ruling: The motion will be denied.

A judgment was entered against the debtor in favor of Unifund CCR Partners for the sum of \$15,822.14 on August 22, 2007. The abstract of judgment was recorded with Tehama County on September 10, 2007. That lien attached to the debtor's real property in Corning, California.

The debtor moves to avoid the lien on the real property pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to 11 U.S.C. § 522(f)(1)(A), the debtor may avoid the fixing of a judicial lien to the extent the lien impairs an exemption. However, the debtor has not demonstrated that she is entitled to the claimed exemption of \$150,000. See Schedule C.

As established in In re Mohring, 142 B.R. 389 (Bankr. E.D. Cal. 1992), *affirmed*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *affirmed*, 24 F.3d 247 (9th Cir. 1994), it is not enough to show that an exemption was claimed on Schedule C without objection. To avoid a judicial lien, the debtor must prove entitlement to the exemption. Because there is no evidence on this issue, the burden has not been satisfied.

Further, the proof of service for the motion does not show that the debtor served the respondent, Unifund CCR Partners, with the motion. Instead, the debtor served the respondent's attorney. But, unless the attorney agreed to accept service, service was improper. See In re Villar, 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). The motion will be denied.

122. 08-25789-A-7 SHERIE ABEL, VS. HEARING - MOTION FOR
DKC #3 ORDER TO AVOID LIEN
SHERMAN ACQUISITIONS, LP 7-30-08 [25]

Tentative Ruling: The motion will be denied.

A judgment was entered against the debtor in favor of Sherman Acquisitions for the sum of \$1,663.74 on March 22, 2004. The abstract of judgment was recorded with Tehama County on April 28, 2004. That lien attached to the debtor's real property in Corning, California.

The debtor moves to avoid the lien on the real property pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to 11 U.S.C. § 522(f)(1)(A), the debtor may avoid the fixing of a judicial lien to the extent the lien impairs an exemption. However, the debtor has not demonstrated that she is entitled to the claimed exemption of \$150,000. See Schedule C.

As established in In re Mohring, 142 B.R. 389 (Bankr. E.D. Cal. 1992), *affirmed*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *affirmed*, 24 F.3d 247 (9th Cir. 1994), it is not enough to show that an exemption was claimed on Schedule C without objection. To avoid a judicial lien, the debtor must prove entitlement to the exemption. Because there is no evidence on this issue, the burden has not been satisfied.

Further, the proof of service for the motion does not show that the debtor served the respondent, Sherman Acquisitions, with the motion. Instead, the debtor served the respondent's attorney. But, unless the attorney agreed to accept service, service was improper. See In re Villar, 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). The motion will be denied.

123. 08-25789-A-7 SHERIE ABEL, VS. HEARING - MOTION FOR
DKC #4 ORDER TO AVOID LIEN
INVESTMENT RETRIEVERS, INC. 7-30-08 [30]

Tentative Ruling: The motion will be denied.

A judgment was entered against the debtor in favor of Investment Retrievers, Inc. for the sum of \$34,841.26 on September 13, 2006. The abstract of judgment was recorded with Tehama County on October 3, 2006. That lien attached to the debtor's real property in Corning, California.

The debtor moves to avoid the lien on the real property pursuant to 11 U.S.C. § 522(f)(1)(A). Investment Retrievers has filed a response of non-opposition. Pursuant to 11 U.S.C. § 522(f)(1)(A), the debtor may avoid the fixing of a

judicial lien to the extent the lien impairs an exemption.

However, the debtor has not demonstrated that she is entitled to the claimed exemption of \$150,000. See Schedule C. As established in In re Mohring, 142 B.R. 389 (Bankr. E.D. Cal. 1992), *affirmed*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *affirmed*, 24 F.3d 247 (9th Cir. 1994), it is not enough to show that an exemption was claimed on Schedule C without objection. To avoid a judicial lien, the debtor must prove entitlement to the exemption. Because there is no evidence on this issue, the burden has not been satisfied. The motion will be denied.

124. 08-25789-A-7 SHERIE ABEL, VS. HEARING - MOTION FOR
DKC #5 ORDER TO AVOID LIEN
CAPITAL ONE BANK 7-30-08 [35]

Tentative Ruling: The motion will be denied.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of \$2,835.55 on January 26, 2004. The abstract of judgment was recorded with Tehama County on March 3, 2004. That lien attached to the debtor's real property in Corning, California.

The debtor moves to avoid the lien on the real property pursuant to 11 U.S.C. § 522(f)(1)(A). Investment Retrievers has filed a response of non-opposition. Pursuant to 11 U.S.C. § 522(f)(1)(A), the debtor may avoid the fixing of a judicial lien to the extent the lien impairs an exemption.

However, the debtor has not demonstrated that she is entitled to the claimed exemption of \$150,000. See Schedule C. As established in In re Mohring, 142 B.R. 389 (Bankr. E.D. Cal. 1992), *affirmed*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *affirmed*, 24 F.3d 247 (9th Cir. 1994), it is not enough to show that an exemption was claimed on Schedule C without objection. To avoid a judicial lien, the debtor must prove entitlement to the exemption. Because there is no evidence on this issue, the burden has not been satisfied. The motion will be denied.

125. 08-28289-A-7 ERIC/JESSICA POST HEARING - MOTION FOR
MAA #1 AUTHORITY TO REDEEM PERSONAL
PROPERTY AND APPROVAL OF
ASSOCIATED FINANCING AND
ATTORNEY FEES
8-5-08 [15]

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

The debtor moves to redeem a 2002 Chevrolet Tahoe pursuant to 11 U.S.C. § 722 by paying \$10,929. WFS Financial/Wachovia Dealer Services is listed in Schedule D as holding a secured claim in the amount of \$17,050. The debtor also seeks permission to pay \$600 from the new loan to counsel for services relating to this motion.

11 U.S.C. § 722 permits a debtor 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. Here, the vehicle is for the debtor's personal use and it has been exempted in Amended Schedule C. The debtor has produced evidence that the replacement value of the vehicle is approximately \$10,929. This amount shall be tendered to WFS/Wachovia within 15

days of entry of the order on this motion.

However, the court will not approve the \$600 payment to the debtor's attorney. The court does not approve compensation paid by chapter 7 debtors to their attorneys. If the compensation is for services related to the petition, the debtor's counsel must comply with the disclosure requirements of Fed. R. Bankr. P. 2016(b). If there is a challenge to the fees as unreasonable, the court will then, but only then, review the fees pursuant to 11 U.S.C. § 329(a).

Nor will the court approve or disapprove the loan financing the redemption. Nothing in the Bankruptcy Code permits or requires the court to approve a post-petition loan to a chapter 7 debtor for which the estate will have no liability.

126. 06-21891-A-7 THOMAS PISHOS HEARING - MOTION FOR
08-2023 PA #3 SANCTIONS
SUSAN SMITH, VS. 8-1-08 [141]
BONNIE PISHOS, ET AL.

Tentative Ruling: The motion will be denied.

Defendants National City Mortgage and Ghaus Malik, individually and in his capacity as trustee of the G. Malik Trust of 2007, asks for sanctions pursuant to Fed. R. Bankr. P. 9011(c), for alleged violations of Fed. R. Bankr. P. 9011(b)(1) and (3). The defendants allege that the plaintiff's continued prosecution of Count VI, paragraph 63 of the first and second amended complaints constituted violation of Fed. R. Bankr. P. 9011(b)(1) and (3) because, conversely to what Count VI, paragraph 63 claims, the trustee is not an assignee of GE's lien against the Highway 88 property. The defendants also complain about a settlement offer the trustee made to them on April 9, 2008, contending that the offer amounted to extortion.

The trustee opposes the motion, arguing that: (1) paragraph 39 of the first and second amended complaints expressly states that the compromise assigning GE's lien to the trustee is subject to bankruptcy court approval; (2) she made her April 9 settlement offer to the defendants before the court denied approval of the assignment of GE's lien; (3) her April 9 settlement offer had other grounds for merit, independent from the assignment of GE's lien, including the trustee's preference and fraudulent conveyance claims; (4) her motion for summary judgment properly requested determination that GE's lien against the Highway 88 property is superior to the claims of the defendants because such determination is essential to the estate's recovery under the avoidance claims; and (5) she has not caused any undue delay or prejudice to the defendants.

Fed. R. Bankr. P. 9011(c)(1)(A) provides that:

"A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion."

Fed. R. Bankr. P. 9011(b) provides that:

"By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,-- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; ... (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."

The court agrees with the trustee.

First, in paragraph 39, both the first and second amended complaints clearly state that the compromise between the estate and GE is subject to bankruptcy court approval. See Docket Nos. 11, 13. This means that the allegations in Count VI, paragraph 63 are subject to the trustee obtaining court approval of the compromise assigning GE's lien to the estate. Neither the first nor second amended complaints misrepresent the trustee's obligation to secure bankruptcy court approval of her compromise with GE.

Second, the defendants contend that the trustee refused to dismiss Count VI of the second amended complaint, upon requests by the defendants on or about May 27 and June 18. See Exhibit 2 and 4 to Motion. However, a review of the trustee's responses to the defendants' May 27 and June 18 requests does not comport with the defendants' reading of the facts. The trustee's June 3 letter to the defendants, in response to their May 27 request for dismissal of Count VI, only generally states that the trustee "disagree[s] with [the defendants'] conclusions." See Exhibit 3 to Motion. It states nowhere that the trustee is continuing to assert her position as an assignee of GE's claim.

Moreover, in her June 18 e-mail response, the trustee makes it clear that she does not consent to dismissal of Count VI because her "standing is based on the estate's marshalling [sic] rights," and not because she disagrees with the defendants that she is not an assignee of GE's lien. See Exhibit 5 to Motion. In other words, Count VI consists of more than just the estate's alleged status as an assignee of GE's lien. Count VI consists of a request for a determination of whether GE's lien in the Highway 88 property is superior to the claims of the defendants, regardless of whether the trustee is an assignee of GE's lien. The court rejects the defendants' contention that the trustee has been refusing to dismiss Count VI, paragraph 63. Refusing to dismiss Count VI as a whole is not the same as refusing to dismiss Count VI, paragraph 63.

Third, on June 20, the trustee filed a motion for leave to file a third amended complaint, deleting the allegations at issue in Count VI, paragraph 63. This shows that the trustee had no intention to pursue the allegations in Count VI, paragraph 63. On the other hand, in the third amended complaint, the trustee continued to pursue the remainder of Count VI, seeking determination of whether GE's lien is superior to the claims of the defendants. The court also notes that the trustee filed the motion for leave to file third amended complaint four days before the defendants served the instant motion upon the trustee. The instant, yet unfiled, motion was served on the trustee on June 24. See Supplemental Declaration of Estela O. Pino at 6. Therefore, for purposes of this motion, the trustee abandoned her assertion that she is an assignee of GE's lien well before the "safe harbor" period of Rule 9011(c)(1)(A) started

running. The court concludes, then, that the defendants have not met the "safe harbor" provision requirements of the rule.

Fourth, the court agrees with the trustee that she made her April 9 settlement offer to the defendants before the court denied approval of the assignment of GE's lien and that the offer had other grounds for merit, independent from the assignment of GE's lien, including the trustee's preference and fraudulent conveyance claims. Thus, the assertion that the offer amounted to extortion is without merit.

Lastly, the court denied the trustee's motion for summary judgment not because it had no merit, but because it was premature, given the fact that the trustee had just been allowed to amend her complaint to add GE as a defendant and object to GE's proof of claim. See Docket No. 131. As noted by the court in its denial of the motion, the trustee does not have standing to pursue her amended Count VI, "unless ... the validity of GE's lien somehow impacts a claim against the estate or property of the estate." By objecting to GE's claim, the trustee has met this condition. If GE's lien is valid and superior over the claims of the defendants, GE's claim against the estate can be satisfied from the enforcement of its lien against the Highway 88 property, significantly reducing the total claims against the estate.

The motion will be denied.

127. 08-28692-A-7 REYES VILLEGAS HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AMERICA'S SERVICING CO., VS. 7-17-08 [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, America's Servicing Company, seeks relief from the automatic stay as to a real property in Carmichael, California. The property has a value of \$314,615 and is encumbered by claims totaling approximately \$374,019.31. The movant's deed is in first priority position and secures a claim of \$260,597.31.

The court concludes that there is no equity in the property 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 12, 2008. 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 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.

128. 08-29593-A-7 JOSE REYES

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
8-4-08 [10]

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 did not file Exhibit D with the credit counseling certificate, the statement of current monthly income and means test calculation, Schedules I, and the statement of financial affairs, as required by Interim Rule 1007(b) (1)&(3), (c), 11 U.S.C. § 521(a), (b), and 11 U.S.C. § 707(b) (2) (C).

However, the debtor filed all missing documents on August 12, 2008. No prejudice has resulted from the delay.

129. 08-29593-A-7 JOSE REYES
WGM #1
WASHINGTON MUTUAL BANK, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-15-08 [19]

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

The motion will be granted.

The movant, Washington Mutual Bank, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$260,000 and is encumbered by claims totaling approximately \$381,112.08. The movant's deed is in first priority position and secures a claim of \$309,541.12.

The court concludes that there is no equity in the property 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 18, 2008.

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

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

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

130. 08-23794-A-7 RICHARD REIS
ND #1
SAXON MORTGAGE SERVICES, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-30-08 [19]

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

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

The movant, Saxon Mortgage Services, Inc., seeks relief from the automatic stay as to a real property in Vacaville, California.

Given the entry of the debtor's discharge on July 1, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of \$350,000 and is encumbered by claims totaling approximately \$406,025.31. The movant's deed is in first priority position and secures a claim of \$295,025.31.

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

131. 08-27597-A-7 PHILIP/HEATHER HOWARD HEARING - MOTION FOR
EDH #1 RELIEF FROM AUTOMATIC STAY
HSBC BANK USA, NA, VS. 7-14-08 [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, HSBC Bank U.S.A., seeks relief from the automatic stay as to a real property in Antelope, California. The property has a value of \$150,500 and is encumbered by claims totaling approximately \$218,924.84. The movant's deed is in first priority position and secures a claim of \$164,070.84.

The court concludes that there is no equity in the property 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, 2008.

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

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

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