

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Chief Bankruptcy Judge  
Sacramento, California

September 8, 2008 at 9:00 a.m.

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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 OCTOBER 6, 2008 AT 9:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 22, 2008, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 29, 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.

September 8, 2008 at 9:00 a.m.

1. 08-21100-A-7 LARRY/TERRI PETTIBONE  
TJS #1  
JP MORGAN CHASE BANK, N.A., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
8-6-08 [83]

**Tentative Ruling:** The motion will be dismissed as moot.

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay with respect to a 2007 Cadillac Escalade.

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 January 31, 2008 and a meeting of creditors was first convened on March 7, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than March 1. The debtor filed a statement of intention on the petition date, indicating only an intent to "retain collateral and continue to make regular payments."

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 collateral 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 March 1, 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.

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

2. 08-27200-A-7 DARAN ORCHARD HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
NATIONSTAR MORTGAGE LLC, VS. 8-4-08 [25]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Nationstar Mortgage LLC, seeks relief from the automatic stay as to a real property in Lodi, California. The property has a value of \$167,000 and is encumbered by claims totaling approximately \$213,371.86. The movant's deed is in first priority position and secures a claim of \$166,371.86.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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 (9<sup>th</sup> 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.

3. 07-28301-A-7 REAGAN BROOKLYN, INC. HEARING - ORDER TO  
SHOW CAUSE  
8-6-08 [56]

**Tentative Ruling:** The order to show cause will be discharged and the motion for attorney's fees will remain pending.

This order to show cause was issued because, after obtaining approval of its compensation on March 31, 2008, counsel for the alleged debtor did not lodge an order with the court within 14 days of the March 31 hearing.

Counsel for the alleged debtor has filed a response, stating that he "does not recall ever being instructed by the Court to submit a formal order." He also states that the order was submitted to the court on July 7.

The court issued a final ruling on the motion for compensation on March 31, 2008. The preamble to all of the court's rulings, at the top of the calendar, provides that **UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.**

However, counsel for the alleged debtor did not lodge an order for at least 13 weeks.

Nevertheless, the court finds no prejudice to the late submission of the order.

4. 08-28204-A-7 DONALD/CANDY HUME HEARING - MOTION FOR  
EAT #1 RELIEF FROM AUTOMATIC STAY  
MERRILL LYNCH CREDIT CORP., VS. 8-11-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Merrill Lynch Credit Corporation, seeks relief from the automatic stay as to a real property in Vacaville, California. The property has a value of \$573,500 and is encumbered by claims totaling approximately \$724,847.96. The movant's deed is in second priority position and secures a claim of \$44,847.36.

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 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.

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

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

5.	08-28404-A-7	JULIANA VASQUEZ AND	HEARING - MOTION FOR
	MBB #1	OMAR RAMOS	RELIEF FROM AUTOMATIC STAY
	MTG. ELECTR. REGIS. SYS., INC., VS.		8-11-08 [27]

**Final Ruling:** The motion will be dismissed without prejudice because the proof of service documents indicate that the movant did not serve the debtor's attorney, Harry Roth. See Amended Voluntary Petition, Docket No. 21.

6.	08-29704-A-7	RUEANNA SHARRAH	HEARING - MOTION FOR
	ND #1		RELIEF FROM AUTOMATIC STAY
	SAXON MORTGAGE SVCS., INC., VS.		8-7-08 [15]

**Tentative Ruling:** Although the movant has given 32 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, Saxon Mortgage Services, Inc., 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 \$406,301.29. 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

7.	08-27606-A-7    GUADALUPE NAVARRO PD #1 GMAC MORTGAGE, LLC, VS.	HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 8-11-08    [17]
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**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Sacramento, California. The property has a value of \$173,000 and is encumbered by claims totaling approximately \$268,367.69. 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 \$238,503.69.

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

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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing 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. 08-29006-A-7 BONNIE ANDRADE HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
8-14-08 [15]

**Tentative Ruling:** The petition will be dismissed.

This order to show cause was issued because the debtor did not attend a meeting of creditors scheduled for and held on August 12, 2008. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

9. 08-29508-A-7 WILLIAM/TRACY DOBSON HEARING - MOTION FOR  
ASW #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 8-8-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Platinum Community Bank, seeks relief from the automatic stay as to a real property in Cottonwood, California. The property has a value of \$189,000 and

is encumbered by claims totaling approximately \$212,984.54. The movant's deed is in second priority position and secures a claim of \$25,814.54.

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.

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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

10. 08-30008-A-7 PAUL/JESSICA PORTEM HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
AMERICA'S SERVICING CO., VS. 8-5-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Elk Grove, California. The property has a value of \$410,000 and is encumbered by claims totaling approximately \$460,393.48. The movant's deed is in first priority position and secures a claim of \$412,393.48.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed

of trust described in the motion.

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

11. 08-25810-A-11 THE O'BRYAN COMPANY, INC. CONT. HEARING - EMERGENCY MOTION  
AGT #1 OF DEBTOR FOR ENTRY OF INTERIM AND  
FINAL ORDER (I) AUTHORIZING DEBTOR  
TO USE CASH COLLATERAL; (II)  
MODIFYING THE AUTOMATIC STAY;  
(III) GRANTING ADEQUATE PROTEC-  
TION; (IV) SCHEDULING A FINAL  
HEARING (V) GRANTING RELATED  
RELIEF  
5-7-08 [13]

**Tentative Ruling:** Future use of cash collateral will be granted.

This motion was continued from August 11 to September 8. The debtor has submitted its actual financial performance for August 2008, showing actual income of \$405,899.67 and actual expenses of \$387,557.99. The court is prepared to issue another order, interim or final, approving use of cash collateral.

12. 08-25810-A-11 THE O'BRYAN COMPANY, INC. HEARING - DEBTOR'S MOTION FOR  
AGT #8 ORDER PERMITTING SALE OF PROPERTY  
OUTSIDE OF THE ORDINARY COURSE OF  
BUSINESS  
8-8-08 [146]

**Tentative Ruling:** The motion will be granted.

The debtor in possession seeks authorization to sell a 2003 Ford E50 van for \$4,500 and also seeks authority to market the vehicle.

Section 1107(a) provides that a debtor-in-possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to sell property of the estate pursuant to section 363.

11 U.S.C. § 363(b) allows, then, a debtor-in-possession to sell property of the estate, other than in the ordinary course of business. The sale must be fair, equitable, and in the best interest of the estate. In re Mozer, 302 B.R. 892, 897 (C.D. Cal. 2003). The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to section 363(b), as it is in the best interests of the creditors and the estate.

13. 08-29710-A-7 STEVEN/ANDREA WILLIAMS  
MBB #1  
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Chico, California. The property has a value of \$600,000 and is encumbered by claims totaling approximately \$628,570. The movant's deed is in first priority position and secures a claim of \$535,570.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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 (9<sup>th</sup> 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.

14. 08-26813-A-9 CITY OF VALLEJO, CALIFORNIA HEARING - MOTION FOR  
DD #1 RELIEF FROM AUTOMATIC STAY  
MACARIO BELEN DAGDAGAN, VS. 8-7-08 [202]

**Tentative Ruling:** The motion will be granted in part.

The movant, Macario Belen Dagdagan, moves for relief from the automatic stay to proceed with a federal district court action against the City and two of its police officers. The action includes tort and civil right violation claims and seeks recovery for personal injuries. The movant argues that the City would not be prejudiced by the granting of relief from stay because it is represented by attorneys on its payroll and it has an available excess insurance coverage pool. The movant also contends that the action is not a proceeding that "arises in" or is "related to" a case under the Bankruptcy Code, within the meaning of 28 U.S.C. § 157.

The City opposes relief from stay, arguing that:

- 1) whether the district court action is "related to" a case under the Code is not relevant to determining cause under 11 U.S.C. § 362(d)(1);
- 2) in the event it is relevant to determining cause, this court has "related to" jurisdiction over the federal district court action; and
- 3) the harm to the City in having to defend the litigation outweighs harm to the movant because the City is short on in-house attorneys and must expend \$500,000 before the excess insurance coverage pool becomes available.

The City is also concerned about the precedent the ruling on this motion would set for other pending litigation against the City.

The litigation was pending for approximately four and one-half months in the district court and the City has responded to the complaint.

The issue of whether the district court action is "related to" a case under the Code is not relevant to determining cause for relief from the automatic stay.

The court concludes that any harm to the City in proceeding with the litigation

is outweighed by the harm to the movant in denying him relief from stay. The movant's declaration describes substantial personal injuries that have required multiple surgeries. As a result, the movant is in a financial hardship that would be exacerbated if the litigation continues to be stayed.

On the other hand, the court gives little weight to the City's contention that it has one seasoned litigator defending approximately 33 cases. Because of the petition, those cases are stayed except to the extent the court modifies the automatic stay. And, while the City has stated that the costs of defending the litigation would be substantial, the City has not provided an estimate of such costs. Further, whatever the cost, unless the City wishes to concede liability and the damages, the claim must be liquidated for purposes of the bankruptcy. The issue boils down to whether it will liquidated here or in the district court. Given that the claim has nothing to do with the Bankruptcy Code and because the action seeks recovery for personal injuries, it should go forward in the district court. See 28 U.S.C. § 157(b)(5). In light of the foregoing, the court concludes that cause for the granting of relief from stay exists.

However, because the excess insurance coverage pool becomes available only after the City expends \$500,000 of its own funds, the court will grant relief only to permit the movant to proceed to trial, but not to enforce any judgment against the City. In the event the movant obtains a judgment against the City, the movant must seek further relief from stay to enforce that judgment.

Lastly, the City should not be concerned with this "precedent" because cause is determined on a case-by-case basis.

The motion will be granted in part.

15. 08-26813-A-9 CITY OF VALLEJO, CALIFORNIA HEARING - PRO SE OBJECTOR  
FBM #1 MUSTAFA ABDUL-GHANEI MOTION FOR  
ORDER REQUIRING THE CITY OF  
VALLEJO TO AMEND ITS LIST OF  
TWENTY LARGEST CLAIMS AGAINST  
THE CITY OF VALLEJO BY ADDING  
THE PEOPLE TO THE LIST  
8-5-08 [195]

**Tentative Ruling:** The motion will be denied.

On behalf of the people or residents of Vallejo, Mr. Mustafa Abdul-Ghaneie moves for an order requiring the City of Vallejo to amend its list of 20 largest creditors "by adding the people (commonly referred to as Vallejo residents and/or people who pay taxes in Vallejo) to the list and suspending proceedings on the City of Vallejo petition to enter bankruptcy until such time as the debt of the City to the people has been reasonably determined and reasonable and appropriate accommodation for the people to be represented in the hearing on the City's petition to enter bankruptcy has been made." The motion alleges a breach of contract by the City to its residents because of the City's plan to cut funding for libraries, parks, senior centers, the symphony, community arts and the museum, and decrease funding for street maintenance and repair. Mr. Abdul-Ghaneie also maintains that the City precluded its residents from objecting to the City's eligibility for bankruptcy.

The City of Vallejo opposes the motion, arguing that: (a) Mr. Abdul-Ghaneie does not have standing to represent the City's residents collectively; (b) individually, the City's residents are not creditors because they do not have a

right to payment; and (c) despite not being creditors of the City, its residents are not precluded from being heard, as it is evidenced by the instant motion and other pleadings filed by Mr. Abdul-Ghaneer.

The court agrees with the City of Vallejo.

First, to the extent this motion is a collateral attack on the bankruptcy petition, the motion will be dismissed as untimely because objections to the petition were due at 12:00 p.m. on June 27, 2008. See Docket No. 49. The court also notes that Mr. Abdul-Ghaneer already filed an objection to the petition. See Docket No. 96. However, Mr. Abdul-Ghaneer did not present any evidence with the objection nor oral argument on his objection even though the court invited all objecting parties to do so on August 22 after the Unions concluded the presentation of evidence on their objections.

Second, Mr. Abdul-Ghaneer has not alleged his standing to represent any of the City's residents or represent any claims they may have against the City, or object to the City eligibility to continue in bankruptcy. A review of the California State Bar's online records shows that Mr. Abdul-Ghaneer is not a member of the California State Bar. Thus, he is not licensed to practice law in California.

Mr. Abdul-Ghaneer also does not meet the constitutional and prudential requirements of standing. Under the case or controversy requirements of Article III of the United States Constitution, a litigant (1) must show that he has personally suffered some actual or threatened injury due to alleged illegal conduct, known as the "injury in fact element;" (2) the injury must be fairly traceable to the challenged action, known as the "causation element;" and (3) there must be a substantial likelihood that the relief requested will redress or prevent plaintiff's injury, known as the "redressability element." U.S.C.A. Const. Art. 3, § 1 et seq.; Allen v. Wright, 468 U.S. 737, 751 (1984); Gladstone Realtors v. Vill. of Bellwood, 441 U.S. 91, 99 (1979).

Mr. Abdul-Ghaneer has not identified an actual or threatened injury personally suffered by him. See also Warth v. Seldin, 422 U.S. 490, 501 (1975) (mandating a distinct and palpable injury). He only alleges that the City will lose some or all funding for its libraries, parks, senior centers, the symphony, community arts, the museum, and street maintenance and repair. But, he does not connect this to an actual or threatened injury he has or would personally suffer.

Moreover, Mr. Abdul-Ghaneer has not alleged, let alone established, that any injury resulting from the loss of City services is "fairly traceable to the challenged action," namely, placing the City's residents on the list of 20 largest creditors or disallowing the City from continuing with its bankruptcy case. The bankruptcy filing is not a cause of the loss of City services. Rather, they are both consequences of the City's lack of funds. The court also has no evidence that the relief requested by Mr. Abdul-Ghaneer would redress any injury caused by the loss of City of services. A discontinuance of the bankruptcy case would not generate funds for and restore City services.

Further, the prudential requirements of standing provide that: (1) the litigant must assert his own legal interests and not those of third parties; (2) the litigant "must assert an injury that is peculiar to himself or to a distinct group of which he is a part, rather than one 'shared in substantially equal measure by all or a large class of citizens;'" and (3) the interest of the litigant must be within the "zone of interests" to be protected by the statute

under which his claim arises. Gladstone Realtors v. Vill. of Bellwood, 441 U.S. 91, 100 & n.6 (1979) (quoting Warth at 499). This means that Mr. Abdul-Ghaneer may not assert the legal interests of other City residents.

More importantly, Mr. Abdul-Ghaneer may not rest his claim on injury that is a "generalized grievance," being "shared in substantially equal measure by all or a large class of citizens." Warth at 499 (holding that the grievance shared by the low and moderate income groups among the residents of a town, where an adjacent town's zoning ordinance purportedly excluded persons of those income groups from living in the adjacent town, are too general for standing to exist). Any resulting injury from the loss of the enumerated services would be shared by all 120,000 Vallejo residents because generally all they have access to libraries, parks, senior centers, the symphony, community arts, the museum, and the streets of Vallejo. The generality of the grievances in Warth are analogous to the generality of any grievance that would result in this case. In fact, the class of city residents who would be impacted by grievances in this case is broader than the class of town residents who were impacted by the grievance in Warth because in this case the impact is not limited to particular income groups as was in Warth. Hence, even though Mr. Abdul-Ghaneer has not alleged any actual or threatened injury, the court concludes that any injury that would result from the loss of the enumerated City services is a "too general grievance" for standing to exist. Accordingly, Mr. Abdul-Ghaneer has no standing as to this motion.

Third, given the foregoing analysis, the court further concludes that none of the City's residents have standing to appear in this proceeding just by virtue of their status as a resident of the City. They must have more than just a status of a resident, they must have a claim against the City. A claim is defined as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." See 11 U.S.C. § 101 (5) (A).

The motion will be denied.

16. 08-26813-A-9 CITY OF VALLEJO, CALIFORNIA HEARING - MOTION TO  
BM #1 APPROVE STIPULATION FOR  
TRIAD COMMUNITIES, L.P., VS. RELIEF FROM STAY  
8-25-08 [225]

**Tentative Ruling:** The motion will be granted.

Triad Communities, LP, moves for approval of a stipulation for relief from the automatic stay among the City of Vallejo, Triad, and Arsalan Darmal, the plaintiff in a pending state court action. The stipulation provides for the lifting of the automatic stay with respect to the state court action. However, the state court action would not expose the City of Vallejo to any financial claim or liability because Triad has agreed to defend, indemnify, and hold the City harmless.

Given that Triad has agreed to defend, indemnify, and hold the City of Vallejo harmless, the court concludes that the compromise is in the best interest of the estate and its creditors. In the event a monetary judgment is entered against the City, Triad would have to pay such a judgment. In other words, the City has no exposure to any financial liability in the action. Accordingly, the stipulation will be approved and the motion will be granted.

17. 08-29513-A-7 ANTHONY/SIERRA ATCHISON HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
GMAC MORTGAGE, LLC, VS. 8-11-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Lincoln, California. The property has a value of \$308,000 and is encumbered by claims totaling approximately \$470,050.43. The movant's deed is in first priority position and secures a claim of \$371,988.43.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing 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. 08-29917-A-7 ROBERT/KIMBERLY TAYLOR HEARING - MOTION FOR  
JHW #1 RELIEF FROM AUTOMATIC STAY  
DAIMLERCHRYSLER FIN'L SVCS., ETC., VS 8-6-08 [8]

**Tentative Ruling:** The motion will be dismissed as moot.

The movant, Daimlerchrysler Financial Services Americas, seeks relief from the automatic stay with respect to a 2006 Dodge Charger.

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 July 22, 2008 and a meeting of creditors is scheduled for September 17, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than August 21. The debtor filed a statement of intention on the petition date, but did not list the vehicle in it.

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

Here, although the debtor filed a statement of intention on the petition date, the vehicle is not listed in the statement. 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 August 21, 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.

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

19. 08-27118-A-7 JENIFER MILLER  
DMM #1  
WACHOVIA MORTGAGE, FSB, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
8-8-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Elk Grove, California. The property has a value of \$225,000 and is encumbered by claims totaling approximately \$368,814.04. 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing 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. 08-29419-A-7 ROLANDO/ROSIE HERRERA HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
GMAC MORTGAGE, LLC, VS. 8-5-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Sacramento, California. The property has a value of \$194,000 and

is encumbered by claims totaling approximately \$270,419.51. 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 \$195,689.51.

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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

21. 08-26620-A-7 JESUS SALCEDO AND HEARING - MOTION FOR  
EAT #1 LUZ RIVAS RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 8-7-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 CMG Mortgage, Inc., seeks relief from the automatic stay as to a real property in Elk Grove, California. The property has a value of \$259,000 and is encumbered by claims totaling approximately \$358,367.11. The movant's deed is in first priority position and secures a claim of \$319,867.11.

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

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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

22. 08-29120-A-7 JAMES/COURTNEY FILIPPI HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 8-6-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Citimortgage, Inc., seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$600,000 and is encumbered by claims totaling approximately \$753,177.88. The movant's deed is in first priority position and secures a claim of \$628,836.88.

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 August 29, 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing 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. 08-28025-A-7 JOHN CHASE  
UST #1

HEARING - U.S. TRUSTEE'S MOTION  
FOR ORDER OF CIVIL CONTEMPT AND  
DISMISSAL OF CASE WITH PREJUDICE;  
MOTION FOR RECONSIDERATION OF  
ORDER ALLOWING DEBTOR TO PROCEED  
IN FORMA PAUPERIS  
8-8-08 [25]

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

The U.S. Trustee moves for contempt and sanctions against the debtor on the grounds that the debtor is a serial filer, has disobeyed court orders prohibiting him from filing for bankruptcy, and has provided evasive, contradictory and misleading information under oath. The U.S. Trustee also seeks dismissal with prejudice pursuant to 11 U.S.C. § 109(g) or for bad faith under 11 U.S.C. § 707(b)(3)(A). Finally, the U.S. Trustee moves for reconsideration and setting aside of the court's order granting waiver of the chapter 7 filing fee.

If a person disobeys a specific and definite court order, he may be properly adjudged in contempt. Crystal Palace Gambling Hall, Inc. v. Mark Twain Industries, Inc. (In re Crystal Palace Gambling Hall, Inc.), 817 F.2d 1361, 1365 (9<sup>th</sup> Cir. 1987); Dyer v. Knupfer (In re Dyer), 322 F.3d 1178, 1190-91 (9<sup>th</sup> Cir. 2003). The party moving for contempt has the burden of showing by clear and convincing evidence that a specific and definite court order has been violated. Dyer at 1190-91. A person disobeys an order when he fails to take "all the reasonable steps within [his] power to insure compliance with the [court's] order." Crystal at 1365 (citing Shuffler v. Heritage Bank, 720 F.2d 1141, 1146-47 (9<sup>th</sup> Cir. 1983)).

Bankruptcy courts have the power to sanction contumacious conduct and to impose civil contempt sanctions. Dyer at 1189-90; see also In re Karl, 313 B.R. 827, 830 (Bankr. W.D. Mo. 2004) (citing 11 U.S.C. § 105(a) and Mountain America Credit Union v. Skinner (In re Skinner), 917 F.2d 444, 447 (10<sup>th</sup> Cir. 1990)). This power is derived from 11 U.S.C. § 105(a), which provides that:

*"The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."*

Dyer at 1189-90.

To the extent the motion seeks dismissal pursuant to 11 U.S.C. § 707(b), the motion will be dismissed because it was not served on the chapter 7 trustee as required by Interim Bankruptcy Rule 1017(e).

From 1994 until the present, the debtor has filed 15 bankruptcy cases, including this case, under chapters 7 and 13. The last eight cases, including this case, were filed in the Eastern District of California. The seven prior

cases were filed in the Northern District of California. Thirteen of the 15 cases were dismissed. All chapter 13 cases were dismissed without plan confirmation or any distributions to creditors.

On April 12, 2007, in an adversary proceeding (Adv. Pro. No. 07-2069) brought by the U.S. Trustee to enjoin the debtor from filing additional cases, filed in the debtor's thirteenth bankruptcy case (Case No. 07-20789), under the name of Arellius Derlantiss, the debtor stipulated to a three-year injunction barring him from filing any bankruptcy cases anywhere in the United States, absent prior court approval. The single exception to the injunction was that the debtor could file one chapter 7 case provided that he timely file all schedules, statements, certificates and other documents, pay the filing fee, attend the creditors' meetings, and does not seek to convert the case to chapter 13. The court entered an order approving the stipulation on May 18, 2007.

When the debtor filed this case, he violated the May 18 order by failing to timely file the statement of current monthly income and means test calculation, Schedules A through J, the statement of financial affairs, the statistical summary, and the summary of schedules. The debtor also violated the May 18 order by applying for a filing fee waiver, rather than paying the entire fee.

On November 16, 2007, in the above adversary proceeding, the court entered a minute order granting the debtor's request to file another petition under the following conditions: the debtor must both pay the filing fee and file all documents required by section 521(a) with the petition filing.

When the debtor filed this case, then, he violated the November 16, 2007 order by failing to timely file schedules A through J and the statement of financial affairs. None of those documents were filed with the petition. The debtor also violated the November 16 order by not paying the filing fee with the petition filing. The debtor applied for a filing fee waiver, rather than paying the entire fee.

On January 31, 2005, in the context of the debtor's ninth case (Case No. 04-33539), filed under the name of Artallius Kielley Derlantiss, the court issued an order barring the debtor for 180 days, or until on or about July 30, 2005, from filing another bankruptcy case.

However, the debtor violated the January 31 order by filing two bankruptcy cases within the 180-day bar period. He filed Case No. 05-20747 on January 25, 2005 (10<sup>th</sup> case) and then filed Case No. 05-25582 on May 9, 2005 (11<sup>th</sup> case).

The debtor has made no appearance to explain, justify, or excuse his failure to obey these orders

In light of the foregoing, the court concludes that the U.S. Trustee has met her burden in establishing that the debtor violated three orders, issued on April 12, 2007, November 16, 2007, and January 31, 2005, respectively. Based on these violations, the court concludes holding the debtor in contempt of court is warranted. The court will also order sanctions. The U.S. Trustee shall file a declaration detailing the time and expenses incurred in prosecuting this motion. The court will order the debtor to pay the reasonable fees and costs to the U.S. Trustee as sanctions for civil contempt.

11 U.S.C. § 109(g) (1) provides that:

*"Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if -*

*(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case."*

The debtor filed his prior bankruptcy case (Case No. 07-22862) under the name of Artallius Kielley Derlantiss on April 23, 2007. That case was dismissed on July 12, 2007 due to the debtor's failure to pay an installment filing fee in the amount of \$75. The court dismissed the case because the debtor did not abide by the court's order directing him to pay the installment filing fees. See Docket No. 6, Case No. 07-22862. This was the debtor's fourteenth bankruptcy case in a span of approximately 13 years. Because of this, the debtor knew or should have known that by not paying the installment fee he was violating a court order. The court concludes then that the debtor's failure to abide by the installment fee order was willful. Accordingly, the court will dismiss this case pursuant to 11 U.S.C. § 109(g) (1).

Lastly, because both the May 18 and November 16, 2007 orders required the debtor to pay the entire filing fee with the petition, cause exist pursuant to Fed. R. Civ. P. 60(a) and (b), as made applicable here by Fed. R. Bankr. P. 9024, to reconsider of the order authorizing a fee waiver. In light of the May 18 and November 16, 2007 orders, the court cannot waive the filing fee. Thus, to the extent the motion seeks reconsideration of the filing fee waiver, the motion will be granted and the filing fee will not be waived.

24. 08-30426-A-7 RAGHU SAMI AND HEARING - MOTION FOR  
WGM #1 SUNILA SARUP RELIEF FROM AUTOMATIC STAY  
WASHINGTON MUTUAL BANK, VS. 8-20-08 [8]

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

The motion will be granted.

The movant, Washington Mutual Bank, seeks relief from the automatic stay as to a real property in Elk Grove, California. The property has a value of \$250,000 and is encumbered by claims totaling approximately \$394,191.70. 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 \$351,741.70.

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

25. 08-24927-A-7 MAINLAND NURSERY, INC. HEARING - MOTION TO  
WFH #14 APPROVE THE LEASE OF PROPERTY  
8-19-08 [186]

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

The motion will be granted as provided below.

The debtor moves for approval to lease a portion of its nursery property, located at W. Turner Road in Lodi, California, to Jaswind Tropicals for \$2,619.38 per month and the payment of the utilities. The lease term will be six month, after which the lease will turn into a month-to-month tenancy.

Farmers & Merchants Bank of Central California has filed an opposition, contending that: (1) the parties served with the motion were not provided with the proposed lease agreement; (2) the debtor's reference to security issues is vague and insufficient to explain what are those issues; and (3) any rents generated from the lease are cash collateral of Farmers.

Section 1107(a) provides that a debtor-in-possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to lease property of the estate pursuant to section 363(b)(1). 11 U.S.C. § 363(b)(1) allows, then, a debtor-in-possession to lease property of the estate, other than in the ordinary course of business.

Nothing in the Bankruptcy Rules requires the debtor to attach the lease to its notice of hearing on a motion to approve the lease. On the other hand, the debtor should provide the lease to any party in interest seeking to review it.

As to the debtor's reference to security issues, the court agrees with Farmers that the record is vague about those issues. However, while additional disclosure about those issues may be of interest to Farmers, it is not

essential to the resolution of this motion.

The proposed lease will benefit the estate by bringing approximately \$2,619.38 of cash per month to the estate. Also, the presence of a tenant at the nursery property will provide additional security for that property. Finally, the short six-month term of the lease will not hamper the debtor's marketing efforts in selling the property. The court concludes then that the proposed lease is in the best interest of the creditors and the estate.

The court expects the debtor to comply with all statutory provisions on the use of cash collateral.

26. 08-27128-A-7 WILLIAM DAVIS HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 8-5-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$470,000 and is encumbered by claims totaling approximately \$728,193.34. The movant's deed is in first priority position and secures a claim of \$612,107.34.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

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

27. 08-27229-A-7 ISAAC JOHNSON, JR. HEARING - MOTION FOR  
SEB #1 ORDER COMPELLING TRUSTEE TO  
ABANDON REAL PROPERTY AS A  
BURDENSOME ASSET  
8-29-08 [20] O.S.T.

**Tentative Ruling:** The motion will be granted.

Sheila Brooks, the joint owner of a real property in Roseville, California, moves the court to compel the trustee to abandon the estate's interest in the property. The property is over-encumbered.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate. The property has a scheduled value of \$369,000 and its encumbrances total \$436,771.09. Given this, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

28. 08-28132-A-7 PRISCILLA BRADFORD HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
DEUTSCHE BANK NAT'L TRUST CO., INC., VS. 8-4-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Elk Grove, California. The property has a value of \$250,000 and is encumbered by claims totaling approximately \$447,106.52. 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 29, 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

29. 08-31033-A-7 DAVID/LAURA GARDNER HEARING - MOTION FOR  
RTD #1 RELIEF FROM AUTOMATIC STAY  
THE GOLDEN 1 CREDIT UNION, VS. 8-18-08 [8]

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

The motion will be granted.

The movant, The Golden One Credit Union, seeks relief from the automatic stay with respect to a 2007 Weekend Warrior Fifth Wheel. The vehicle has a value of \$38,000 and its secured claim is approximately \$60,046.30.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. The movant also has no proof of insurance coverage for the vehicle. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to repossess its collateral, 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.

30. 07-25436-A-7 RANDAL JUNG  
HSM #4

HEARING - MOTION TO  
ABANDON PROPERTY OF THE ESTATE  
8-21-08 [112]

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

The motion will be granted.

The trustee seeks to abandon the estate's interest in a real property in La Porte, California. The property is 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 has a scheduled value of \$117,000, whereas its encumbrances total approximately \$850,350.39. See Schedule A. And, the trustee's investigation has shown that the property has no realizable equity for the estate. Further, the property is burdensome to the estate because of potential security, maintenance, and insurance costs, as well as potential negative tax consequences due to a looming foreclosure. Given this, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

31. 07-25436-A-7 RANDAL JUNG  
HSM #5

HEARING - MOTION TO  
ABANDON PROPERTY OF THE ESTATE  
8-21-08 [116]

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

The motion will be granted.

The trustee seeks to abandon the estate's interest in a real property in Yuba City, California. The property is 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 has a scheduled value of \$260,000, whereas its encumbrances total approximately \$860,004.39. See Schedule A. And, the

trustee's investigation has shown that the property has no realizable equity for the estate. Further, the property is burdensome to the estate due to potential security, maintenance, and insurance costs, as well as potential negative tax consequences due to a looming foreclosure. Given this, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

32. 08-26636-A-7 KEVIN/JESSICA HEILMAN HEARING - MOTION FOR  
MBB #1 RELIEF FROM AUTOMATIC STAY  
COUNTRYWIDE BANK, FSB, VS. 8-7-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

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

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

Given the entry of the debtor's discharge on August 26, 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 \$239,500 and is encumbered by claims totaling approximately \$350,844.79. The movant's deed is in first priority position and secures a claim of \$296,923.79.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on June 25, 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

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

33. 08-29536-A-7 KEVIN/MICHELLE MORRIS HEARING - MOTION FOR  
PD #2 RELIEF FROM AUTOMATIC STAY  
CHASE HOME FINANCE, LLC, VS. 8-7-08 [17]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Rocklin, California. The property has a value of \$650,000 and is encumbered by claims totaling approximately \$898,474.83. The movant holds both the first and second deeds against the property, but the motion relates only to the second deed, securing a claim of \$248,474.83.

The court concludes that there is no equity in the property 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 September 2, 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

34. 08-29238-A-7 STANLEY/DEBORAH LOONEY HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
WASHINGTON MUTUAL BANK, VS. 8-11-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Stockton, California. The property has a value of \$171,500 and is encumbered by claims totaling approximately \$307,766.94. 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 \$273,766.94.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing 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. 08-29538-A-7 STEVEN/ANA REED HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
GMAC MORTGAGE, LLC, ET AL., VS 8-7-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Grass Valley, California. The property has a value of \$340,000 and is encumbered by claims totaling approximately \$418,018.77. 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 \$223,018.77.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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 (9<sup>th</sup> 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.

36. 08-28439-A-7 LAMONT/MARCELLA SMITH HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 8-7-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Mila, Inc., 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 \$535,744.76. The movant's deed is in first priority position and secures a claim of \$480,789.76.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing 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. 08-30840-A-7 NUBAL VIDAL

HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
8-15-08 [6]

**Tentative Ruling:** The petition will be dismissed.

This order to show cause was issued because the debtor did not file a master address list with his petition, as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. Although the debtor filed a master address list on August 20, 2008, the notice of the commencement of the case was already served on August 17, 2008. As a result, the creditors on the late-filed master address list were not served with the notice. This has prejudiced those creditors and is cause for dismissal. See 11 U.S.C. § 707(a)(1). Accordingly, the petition will be dismissed.

38. 08-29642-A-7 KATHY VARCOE-HECK

HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
8-7-08 [10]

**Final Ruling:** This order to show cause will be dismissed as moot because the case was already dismissed on September 3.

39. 08-27643-A-7 TRUXEL PROPERTIES, LLC  
MET #1  
BANK OF AMERICA, N.A., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
8-8-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a commercial real property in Sacramento, California. The movant has produced evidence that the property has a value of \$4,900,000 and is encumbered by claims totaling approximately \$5,562,575.79. The movant's deed is the only deed against the property, securing a claim of \$5,488,484.75.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed

of trust described in the motion.

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

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

40. 08-28843-A-7 CHRISTIAN/DONELLE COLLINS HEARING - MOTION FOR  
MET #1 RELIEF FROM AUTOMATIC STAY  
AMERICAN HONDA FINANCE CORP., VS. 8-8-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a leased 2007 Honda Accord. The debtor has not made two pre-petition and one post-petition payments under the lease agreement. The debt under the lease agreement totals \$23,547.66. These facts make it unlikely that the trustee will attempt to assert any interest in the lease. The court also notes that the trustee filed a report of no distribution on August 6, 2008.

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

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

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

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

41. 08-29843-A-7 BRUCE IRWIN HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
LASALLE BANK N.A., AS TRUSTEE, VS. 8-19-08 [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, LaSalle Bank National Association, seeks relief from the automatic stay as to a real property in Tracy, California. The property has a value of \$225,000 and is encumbered by claims totaling approximately \$353,380.64. The movant's deed is in first priority position and secures a claim of \$299,184.49.

The court concludes that there is no equity in the property 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 September 2, 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

42.	08-30443-A-7	BARBARA COMBS	HEARING - MOTION FOR
	KAT #1		RELIEF FROM AUTOMATIC STAY
	MTG. ELECTR. REGIS. SYS., INC., VS.		8-13-08 [7]

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

ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for American Mortgage Servicing, Inc., 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 \$301,155.68. 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

43. 08-29445-A-7 FAUSTINO TREJO HEARING - MOTION FOR  
PPR #1 RELIEF FROM AUTOMATIC STAY  
RYLAND MORTGAGE CO., VS. 8-1-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Ryland Mortgage Co., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$223,500 and is encumbered by claims totaling approximately \$409,339.89. The movant's deed is in first priority position and secures a claim of \$279,339.89.

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 August 21, 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

44. 08-29645-A-7 PARMENDRA/VEENA DALTON HEARING - MOTION FOR  
ND #1 RELIEF FROM AUTOMATIC STAY  
SAXON MORTGAGE SERVICES, INC., VS. 8-15-08 [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, Saxon Mortgage Services, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$164,500 and is encumbered by claims totaling approximately \$230,029.25. The movant's deed is the only deed against the property, securing a claim of \$228,984.59.

The court concludes that there is no equity in the property 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 25, 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

45. 08-28546-A-7 CATHERINE MELENDREZ HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
EMC MORTGAGE CORP., VS. 7-31-08 [16]

**Final Ruling:** The motion will be dismissed because the proof of service accompanying the motion omits the date of service. As a result, the court cannot tell whether or when the motion was served. The motion will be dismissed.

46. 08-27247-A-7 MICHAEL HARLING HEARING - MOTION FOR  
MBB #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 8-7-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Woodland, California. The property has a value of \$256,500 and is encumbered by claims totaling approximately \$359,779.88. The movant's deed is in first priority position securing a claim of \$329,620.88.

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 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

47. 08-22749-A-7 THOMAS ZEILER HEARING - MOTION FOR  
JHW #1 RELIEF FROM AUTOMATIC STAY  
DAIMLERCHRYSLER FIN'L SVCS., ETC., VS. 8-8-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Daimlerchrysler Financial Services Americas, seeks relief from the automatic stay with respect to an already surrendered 2006 Jeep Wrangler.

Given the entry of the debtor's discharge on June 24, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the vehicle. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The movant has produced evidence that the value of the vehicle is approximately \$17,065 and its secured claim is approximately \$17,528.07.

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. Further, the debtor has not made two post-petition payments to the movant. And, the debtor has surrendered the vehicle to the movant. This is cause for the granting of relief from stay.

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

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

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

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

48. 08-24449-A-7 JESSE CEDILLO HEARING - MOTION FOR  
PD #2 ENTRY OF ORDER CONFIRMING  
CITI RESIDENTIAL LENDING, INC., VS. AUTOMATIC STAY IS NOT IN EFFECT  
8-8-08 [51]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 an order confirming that the automatic stay is not in effect with respect to a real property in Oroville, California. The movant seeks the confirmation on the grounds that this is the debtor's third bankruptcy filing since December 19, 2007.

On December 19, 2007, the debtor filed a chapter 13 case (case no. 07-31070). It was dismissed on January 24, 2008. On January 24, 2008, the debtor filed another chapter 13 case (case no. 08-20794). It was dismissed on April 7, 2008. The debtor filed the instant case on April 8, 2008.

Section 362(c)(4)(A) provides that (i) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

The court has reviewed the dockets of the first and second prior cases and has confirmed that those cases were pending within the previous year of the filing of the instant case and that the court dismissed those previous cases. 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.

49. 08-26350-A-7 CARLOS LOPEZ HEARING - MOTION FOR  
ND #1 RELIEF FROM AUTOMATIC STAY  
SAXON MORTGAGE SERVICES, INC., VS. 8-15-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Fairfield, California.

Given the entry of the debtor's discharge on August 27, 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 \$480,000 and is encumbered by claims totaling approximately \$527,818.30. The movant's deed is in second priority position and secures a claim of \$116,018.86.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

50. 08-28250-A-7 MIKHAIL/INNA KOLESNIKOVA HEARING - MOTION FOR  
APN #1 RELIEF FROM AUTOMATIC STAY  
TOYOTA MOTOR CREDIT CORP., VS. 8-6-08 [18]

**Tentative Ruling:** The motion will be dismissed as moot.

The movant, Toyota Motor Credit Corporation, seeks relief from the automatic stay with respect to a 2008 Toyota Corolla.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within

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

The petition here was filed on June 20, 2008 and a meeting of creditors was first convened on July 30, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than July 20. 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 the statement. 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 20, 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 20, 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.

51. 08-28250-A-7 MIKHAIL/INNA KOLESNIKOVA HEARING - MOTION FOR  
APN #2 RELIEF FROM AUTOMATIC STAY  
TOYOTA MOTOR CREDIT CORP., VS. 8-6-08 [24]

**Tentative Ruling:** The motion will be dismissed as moot.

The movant, Toyota Motor Credit Corporation, seeks relief from the automatic stay with respect to a 2008 Toyota Highlander.

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 20, 2008 and a meeting of creditors was first convened on July 30, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than July 20. 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 the statement. 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 20, 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 20, 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.

52. 08-28451-A-7 TALMAGE BORRERO HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
DEUTSCHE BANK NAT'L TRUST CO., ET AL., VS. 8-26-08 [13]

**Tentative Ruling:** The movant has given only 13 days of notice of the hearing on this motion to the debtor's counsel. This is less than the 14 days of notice required by Local Bankruptcy Rule 9014-1(f)(2). Accordingly, the motion will be dismissed.

53. 07-31157-A-7 ALIZAH/AARON TEJERO HEARING - MOTION FOR  
KAT #3 RELIEF FROM AUTOMATIC STAY  
INDYMAC FEDERAL BANK FSB, VS. 8-7-08 [59]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$415,000 and is encumbered by claims totaling approximately \$686,467.11. 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 \$558,197.29.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

54. 08-30357-A-11 RIVER RUN COVE LAND HEARING - APPLICATION BY  
ET #1 DEVELOPMENT, INC. DEBTOR AND DEBTOR-IN-POSSESSION  
FOR ORDER AUTHORIZING EMPLOYMENT  
AND RETENTION OF EASON &  
TAMBORNINI AS COUNSEL FOR THE  
DEBTOR AND DEBTOR-IN-POSSESSION  
NUNC PRO TUNC TO THE DATE OF  
FILING OF THE APPLICATION  
8-6-08 [14]

**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 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

The debtor seeks retroactive approval to employ Eason & Tambornini as counsel for the debtor, effective on July 29, 2008. E&T will provide the debtor with the following services, without limitation: (1) assisting the debtor in its post-petition management and operations, as well as its compliance with court orders and the Bankruptcy Code and Rules; (2) assisting the debtor in the preservation the estate, including defending and prosecuting actions on behalf of the debtor; and (3) assisting the debtor in obtaining a disclosure statement approval and plan confirmation. E&T will charge the debtor hourly rates of \$100 and \$300.

Section 1107(a) provides that a debtor in possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to employ professional persons under 11 U.S.C. § 327(a). This section states that, subject to court approval, a trustee may employ professionals to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including on a contingent fee basis."

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

55. 08-27258-A-7 VICKIE GREBINSKI  
EAT #1  
BANKUNITED, FSB, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
8-11-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, BankUnited, seeks relief from the automatic stay as to a real property in Vallejo, California. The property has a value of \$172,000 and is encumbered by claims totaling approximately \$309,982.72. The movant's deed is the only deed against the property, securing a claim of \$308,682.75.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

56. 08-28058-A-7 CAROLINE SMART  
KAT #1  
AMERICAN HOME MTG. SERVICING, INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
8-14-08 [9]

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

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

The motion will be granted.

The movant, American Home Mortgage Servicing, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$476,000 and is encumbered by claims totaling approximately \$553,784.40. The movant's deed is in first priority position and secures a claim of \$544,704.40.

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. 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

57.	07-30559-A-7 ELVA GAGNON 08-2108 ELVA GAGNON, VS. AMERICAN EDUCATION SERVICES, CITIBANK, ET AL.	CONT. HEARING - MOTION TO INTERVENE IN COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOAN DEBT 6-6-08 [20]
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**Tentative Ruling:** The motion will be granted.

The Education Resources Institute moves to intervene as a defendant under Fed. R. Civ. P. 24, as made applicable here via Fed. R. Bankr. P. 7024.

Fed. R. Civ. P. 24(b)(1) provides that "On a timely motion, the court may permit anyone to intervene who ... (B) has a claim or defense that shares with the main action a common question of law or fact." United States v. State of Washington, 86 F.3d 1499, 1506-07 (9<sup>th</sup> Cir. 1996). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). In determining whether a motion to intervene is timely, the court must consider the stage of the proceeding at which the applicant seeks to



awarded.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing 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. 08-29661-A-7 MARK KELLER HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
WASHINGTON MUTUAL BANK, VS. 8-11-08 [11]

**Tentative Ruling:** The motion will be granted.

The movant, Washington Mutual Bank, seeks relief from the automatic stay as to a real property in Auburn, California. The movant asserts that the property has a value of \$550,000 and is encumbered by claims totaling approximately \$824,519.60. The movant holds both the first and second deeds against the property, but the motion relates only to the first deed, securing a claim of approximately \$457,017.36. According to the motion, the other encumbrances against the property consist of a second deed in favor of the movant, securing a claim of approximately \$138,000, a third deed in favor of GC Services, securing a claim of approximately \$137,502.24, a lien in favor of Pacific Coast Supply in the approximate amount of \$35,000, property taxes in the approximate amount of \$13,000, and costs of sale in the approximate amount of \$44,000.

The debtor opposes the motion, arguing that: (1) GC Services' deed is a duplicative of the movant's second deed; (2) outstanding property taxes total only approximately \$6,000; and (3) he wishes to cure any arrearages to the movant, but the movant has been non-responsive to the debtor's request for an exact cure amount.

First, costs of sale are not encumbrances for purposes of an 11 U.S.C. § 362(d)(2) analysis.

Second, the debtor's willingness and ability to cure arrearages is not relevant under an 11 U.S.C. § 362(d)(2) analysis in the chapter 7 context. This is not a chapter 13 case where the property would have been necessary to an effective reorganization. See 11 U.S.C. § 362(d)(2)(B).

And third, even if the court subtracted out the secured claim of GC Services and decreased the outstanding property taxes to \$6,000, the total encumbrances against the property would still be \$636,017.36, which is more than the property's scheduled value of \$550,000.

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

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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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 (9<sup>th</sup> 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.

60. 08-27162-A-7 CHESTER/FLORDELIZA HARTFORD HEARING - MOTION FOR  
EAT #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 8-11-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Sacramento, California. The property has a value of \$276,000 and is encumbered by claims totaling approximately \$332,047.33. The movant's deed is the only deed against the property, securing a claim of \$331,312.33.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

61.	08-21865-A-7	YVETTE TURNER	HEARING - MOTION FOR
	VVF #1		RELIEF FROM AUTOMATIC STAY
	HYUNDAI MOTOR FINANCE CO., INC., VS.		8-11-08 [78]

**Tentative Ruling:** The motion will be dismissed as moot.

The movant, Hyundai Motor Finance, seeks relief from the automatic stay with respect to a 2005 Hyundai Accent.

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

The petition here was filed on February 19, 2008 and a meeting of creditors was first convened on March 13, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than March 13. The debtor filed a statement of intention on the petition date, but indicated only an intent to claim the vehicle as exempt.

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 whether she will redeem the property or enter into a reaffirmation agreement. 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 March 20, 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 March 18, 2008, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on March 20, 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.

62. 08-23466-A-7 MARK/TAMMY SIRMANS  
PAK #1

CONT. 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 a payment from a co-defendant in a pending state court action 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.

WWF replies that it propounded discovery on the debtors pre-petition, in the context of the state court action, and asked questions at the meeting of creditors. But, Mr. Sirmans did not respond to the discovery and, at the meeting of creditors, referred WWF to the co-defendant about the payment in question.

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. WWF refers to propounding only pre-petition discovery, in the context of the state court action. WWF does not explain why it did not conduct discovery after the petition date of March 21, 2008. This was over five months ago. The court finds then that WWF has had ample opportunity to conduct discovery, including a 2004 exam of the debtors, on whether they received the payment from the co-defendant. WWF has presented no justification or excuse for not conducting such discovery during the pendency of the bankruptcy. Accordingly, the motion will be denied.

63. 08-29968-A-7 KENNETH FERRARI HEARING - MOTION FOR  
ND #2 RELIEF FROM AUTOMATIC STAY  
SAXON MORTGAGE SVCS., INC., VS. 8-20-08 [12]

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

The motion will be granted.

The movant, Saxon Mortgage Services, Inc., seeks relief from the automatic stay as to a real property in Orangevale, California. The property has a value of \$355,000 and is encumbered by claims totaling approximately \$496,885. The movant holds both the first and second deeds against the property, but the motion relates only to the second deed, securing a claim of \$101,332.33.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

64. 07-31369-A-7 JAMES/PATRICIA HUNTER HEARING - MOTION FOR  
PJR #1 RELIEF FROM AUTOMATIC STAY  
TRI COUNTIES BANK, VS. 8-25-08 [42]

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

The movant, Tri Counties Bank, seeks relief from the automatic stay as to a real property in Redding, California.

Given the entry of the debtor's discharge on April 29, 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 \$428,800 and is encumbered by claims totaling approximately \$359,236.86. See Schedule D. The movant holds both the second and third deeds against the property and the motion appears to relate to both deeds, each securing a claim of \$95,866.01 and \$64,531.71 respectively. This leaves approximately \$68,763 of equity in the property. Because of this equity, relief from stay under 11 U.S.C. § 362(d)(2) is not appropriate.

Nevertheless, even though the trustee has filed an "asset report," the debtor has claimed an exemption in the property in the amount of \$150,000. This exemption claim precludes the estate from realizing any of the \$68,763 in equity in the property. Given the exemption and the absence of a timely objection to it, then, the court concludes that cause exists for the granting of relief from stay.

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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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 (9<sup>th</sup> 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.

65. 08-26871-A-7 ROBERT/GENNETTA HOLLINS HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
CITIMORTGAGE, INC., VS. 7-31-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered

and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Citimortgage, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$169,587 and is encumbered by claims totaling approximately \$303,913.81. The movant's deed is in first priority position and secures a claim of \$219,810.81.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

66. 08-28774-A-7 RENANTE BAUTISTA HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 8-4-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$245,000 and is encumbered by claims totaling approximately \$335,774.76. The movant's deed is in first priority position and secures a claim of \$275,774.76.

The court concludes that there is no equity in the property 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 6, 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

67. 08-28774-A-7 RENANTE BAUTISTA HEARING - MOTION FOR  
KAT #2 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 8-14-08 [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, Mortgage Electronic Registration Systems, Inc., as nominee for Ameribanc Corporation, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$356,000 and is encumbered by claims totaling approximately \$584,889.78. The movant's deed is in first priority position and secures a claim of \$474,889.78.

The court concludes that there is no equity in the property 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 6, 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

68. 08-29974-A-7 DOC/MARGARITA HOLLIDAY HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
8-20-08 [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 debtors did not file an attorney's disclosure statement, Exhibit D with the credit counseling certificates for both debtors, the statement of current monthly income and means test calculation, schedules A through J, the statement of financial affairs, the statistical summary, and the summary of schedules, as required by 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 debtors filed all missing documents on August 21, 2008. No prejudice has resulted from the delay.

69. 08-29375-A-7 MELVIN/PRISCILLA CHAMBLEE HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
AMERICA'S SERVICING CO., ET AL., VS. 7-25-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Dixon, California. The property has a value of \$650,000 and is encumbered by claims totaling approximately \$885,527.60. The

movant's deed is in first priority position and secures a claim of \$745,134.82.

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. The court also notes that the trustee filed a report of no distribution on August 20, 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

70. 08-26276-A-7 RONALD/LESLIE RENEE HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 8-11-08 [24]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Real Estate Financial Services, Inc., seeks relief from the automatic stay as to a real property in Ione, California. The property has a value of \$440,000 and is encumbered by claims totaling approximately \$510,510.33. 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 2, 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing 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. 08-30176-A-7 DANIEL NAVARRO HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
8-14-08 [11]

**Tentative Ruling:** The case will be dismissed.

The court issued this order to show cause because the debtor has not filed 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). This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

72. 08-29081-A-7 PAUL/KIMBERLY SODERVICK HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
AMERICAN HOME MTG. SERVICING, INC., VS. 8-21-08 [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, American Home Mortgage Servicing, Inc., seeks relief from the automatic stay as to a real property in Roseville, California. The property has a value of \$488,500 and is encumbered by claims totaling approximately \$705,547.48. The movant's deed is in first priority position and secures a claim of \$600,303.48.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

73.	07-27982-A-7	ROYCE/TERRA MAKISHIMA	CONT. HEARING - DEFENDANTS'
	08-2006	MLB #1	MOTION TO DISMISS FIRST
		GRACE MILES, VS.	AMENDED COMPLAINT
		ROYCE MAKISHIMA, ET AL.	3-12-08 [19]

**Tentative Ruling:** The motion will be granted.

The defendants, Royce and Terra Makishima, who are also the debtors in the underlying bankruptcy case, move for dismissal of the plaintiff's first amended complaint under Fed. R. Civ. P. 12(b)(6), arguing that:

- (1) the first amended complaint was filed on February 11, 2008, after the expiration of the January 2, 2008 deadline for filing 11 U.S.C. §§ 523 and 727 complaints;
- (2) the first amended complaint contains a cause of action, namely a section 523(a)(6) claim, that was not in the plaintiff's original complaint;
- (3) this cause of action was filed after the expiration of the section 523 claim deadline; and
- (4) the amended complaint does not relate back to the date the original complaint was filed because it seeks different relief under a new Bankruptcy Code section and it is based on new facts.

The plaintiff opposes the motion, arguing that the section 523(a)(6) claim in the amended complaint relates back to the filing of the original complaint because it "arose out of the same conduct, transaction, or occurrence" set out, or attempted to be set out, in the original complaint.

At the last hearing on this motion, on May 27, 2008, the court determined that the plaintiff is not pursuing a claim for relief under 11 U.S.C. § 727(a), but is pursuing a claim that a liability of the defendants to the plaintiff is made nondischargeable by 11 U.S.C. § 523(a)(2), (4) or (6). The plaintiff confirmed

this at the hearing on May 27.

The court also concluded that the relief the plaintiff is seeking is related to a state court litigation referenced in the original and amended complaints filed in this court. The plaintiffs is seeking a determination that the defendants' liability to her in the state court litigation should be excepted from their bankruptcy discharge.

As a result, the court continued the hearing to August 11, and then again to September 8, to provide the plaintiff with time to obtain counsel, to permit the defendants to seek a remand from the Northern District, where the state court litigation was removed, and to obtain entry of a judgment, whether from the state court or from the Northern District if it did not remand the action back to state court.

On August 29, 2008, in further support of this motion, the defendants produced a judgment entered by the state court on July 28, 2008, in favor of the defendants and against the plaintiff. This means that the defendants owe no debt to the plaintiff as indicated by the judgment. In other words, because of losing in the state court action, the plaintiff has no basis to assert an underlying liability for her section 523 complaint in this proceeding.

Therefore, dismissal is proper under Fed. R. Civ. P. 12(b)(6), as made applicable by Fed. R. Bankr. P. 7012(b), because the plaintiff's complaint, even as amended, fails to state any underlying liability claim upon which relief under section 523 can be granted.

The motion will be granted and the adversary proceeding will be dismissed.

74. 08-26982-A-7 RORY/MICHAELE BOK HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
8-14-08 [32]

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

This order to show cause was issued because the debtor filed an Amended Master Address List, an Amended Schedule F, and an Amended Statement of Intention on August 13, but did not pay the \$26 filing fee.

However, the filing fee was paid on August 22. No prejudice has resulted from the delay.

75. 08-29782-A-7 ALBERTO FILIO HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
8-7-08 [12]

**Final Ruling:** This order to show cause will be dismissed as moot because the case was previously dismissed on September 3.

76. 08-28184-A-7 JOHN BROWN, JR. AND HEARING - MOTION FOR  
KAT #1 JACQUELINE MCDANIELS RELIEF FROM AUTOMATIC STAY  
U.S. BANK N.A., AS TRUSTEE, ET AL., VS. 8-6-08 [42]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Citrus Springs, Florida. The property has a value of \$135,000 and is encumbered by claims totaling approximately \$186,978.26. The movant's deed is in first priority position and secures a claim of \$167,472.26.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

77. 08-28184-A-7 JOHN BROWN JR. AND HEARING - MOTION FOR  
PD #2 JACQUELINE MCDANIELS RELIEF FROM AUTOMATIC STAY  
NATIONAL CITY MORTGAGE, VS. 8-5-08 [36]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Tracy, California. The property has a value of \$1,250,000 and is encumbered by claims totaling approximately \$1,562,648.28. The movant's deed is in first priority position and secures a claim of \$1,452,546.28.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

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

78. 08-29784-A-7 TITO PERLAS HEARING - MOTION FOR  
MBB #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 8-11-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 \$300,000 and is encumbered by claims totaling approximately \$587,626.73. The movant's deed is in first priority position and secures a claim of \$510,791.73.

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 August 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing 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. 08-25586-A-7 JERRY DORTON HEARING - U.S. TRUSTEE'S MOTION  
UST #1 FOR EXTENSION OF TIME FOR FILING A  
MOTION TO DISMISS OR A COMPLAINT  
OBJECTING TO DEBTORS' DISCHARGE  
7-31-08 [26]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor, the trustee, 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 U.S. Trustee seeks a 60-day extension, from August 11 to October 10, of the deadlines for filing complaints objecting to discharge under 11 U.S.C. § 727 and for filing motions to dismiss under 11 U.S.C. § 707(b). The U.S. Trustee seeks the extensions to further investigate the debtor's financial affairs, because of inconsistencies in the debtor's schedules and statements, including inconsistencies about the debtor's employment and position with an entity titled JC Management, Inc., about the debtor's rental of a real property, and about the debtor's current and past salaries.

11 U.S.C. § 707(b) and Interim Bankruptcy Rule 1017(e)(1) provide that dismissal motions may be brought by the U.S. Trustee and must be filed within 60 days of the first date set for the meeting of creditors. The court may grant an extension upon a showing of cause. The motion for an extension must be filed before the expiration of the 60-day deadline. Interim Bank. R. 1017(e)(1). The initial meeting of creditors was set for June 10, 2008. 60 days from that date was August 9.

Bankruptcy Rule 4004(b) provides that the court may extend the deadline for filing section 727 complaints for cause. The motion must be filed before the deadline expires. The deadline here was August 11.

Because this motion was filed on July 31, 2008, it complies with the temporal requirements of both Rules 1017(e) (1) and 4004(b). Given the discrepancies in the debtor's disclosures about employment, the rental of a real property, and salary history, and given the need for investigation of those discrepancies, cause for extension of the deadlines exists. The motion will be granted and both deadlines extended to and including October 10, 2008.

80. 08-26486-A-7 JORDAN/JESSICA CARROLL HEARING - MOTION FOR  
APN #2 RELIEF FROM AUTOMATIC STAY  
NISSAN MOTOR ACCEPTANCE CORP., VS. 8-11-08 [28]

**Tentative Ruling:** The motion will be dismissed as moot.

The movant, Nissan Motor Acceptance Corporation, seeks relief from the automatic stay with respect to a 2006 Nissan Altima.

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

The petition here was filed on May 16, 2008 and a meeting of creditors was first convened on July 9, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than June 15. 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 June 15, 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 9, 2008, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on June 15, 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.

81. 08-28787-A-7 JOCELYN SABLAN HEARING - MOTION FOR  
APN #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO FINANCIAL, VS. 8-6-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Financial, seeks relief from the automatic stay with respect to a 2003 BMW 7 Series. The vehicle has a value of \$43,340 and its secured claim is approximately \$46,667.09. 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 6, 2008. And, the statement of financial affairs indicates that the vehicle was repossessed or surrendered on or about June 6, 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.

82. 08-25291-A-7 ROBERT/CARMEN ARMSTRONG HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 8-11-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Sutton Funding LLC, seeks relief from the automatic stay as to a real property in Vacaville, California. The property has a value of \$377,500 and is encumbered by claims totaling approximately \$511,155.03. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on June 9, 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.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing 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. 08-29193-A-7 VICTOR/ORALIA RODRIGUEZ HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO HOME MTG., INC., VS. 8-5-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Woodland, California. The property has a value of \$300,000 and is encumbered by claims totaling approximately \$399,081.54. The movant's deed is in first priority position and secures a claim of \$322,470.33.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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

84. 08-26697-A-7 MARIA DE LA LUZ RIVARD HEARING - MOTION FOR  
PD #2 RELIEF FROM AUTOMATIC STAY  
DEUTSCHE BANK NAT'L TRUST CO., VS. 8-15-08 [37]

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

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Fair Oaks, California. The property has a value of \$530,000 and is encumbered by claims totaling approximately

\$661,854.30. The movant's deed is in first priority position and secures a claim of \$531,287.30.

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

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

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