

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 15, 2008 at 9:00 a.m.

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

ITEMS WITH TENTATIVE RULINGS:

IF A CALENDAR ITEM HAS BEEN SET FOR HEARING BY THE COURT PURSUANT TO AN ORDER TO SHOW CAUSE OR AN ORDER SHORTENING TIME, OR BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(1) OR LOCAL BANKRUPTCY RULE 9014-1(f)(1), AND IF ALL PARTIES AGREE TO THAT TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS AND CONCLUSIONS.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON JANUARY 12, 2009 AT 9:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 29, 2008, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 5, 2009. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING, AND OF THESE DEADLINES.

ITEMS WITH FINAL RULINGS:

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

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

December 15, 2008 at 9:00 a.m.

1. 08-35500-A-7 WAYLAND/PAMELA WOODARD HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MTG., INC. 11-4-08 [8]

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

The motion will be granted.

The movant, Wells Fargo Home Mortgage, seeks relief from the automatic stay with respect to real property in Galt, California. The property has a value of \$250,000 and is encumbered by claims totaling approximately \$416,298.78. The movant's deed is in first priority position and secures a claim of \$339,643.78.

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.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

2. 08-34301-A-7 RICKY ORTEGA HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-13-08 [14]

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

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The debtor failed to pay a portion of an installment. However, the debtor paid that portion on November 14, 2008. No prejudice has resulted from the delay.

3. 08-32502-A-7 KARINA AISPURO
JHW #1
U.S. BANK, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-4-08 [22]

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

The motion will be dismissed as moot.

The movant, U.S. Bank, seeks relief from the automatic stay with respect to a 2004 Pontiac Aztek.

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). If the debtor states an intention to reaffirm or redeem, the debtor must perform the intention within 30 days of the date first set for the meeting of creditors. See 11 U.S.C. § 521(a)(2)(B).

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).

The petition here was filed on September 3, 2008 and a meeting of creditors was first convened on October 29, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than October 3, 2008. The debtor filed a statement of intention on the petition date that indicated nothing regarding the subject vehicle or the debt secured by it. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on October 3, 2008, 30 days after the filing of the petition.

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 October 3, 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.

The movant shall bear its own fees and costs.

4. 08-29703-A-7 BRYAN/MELISSA HEYECK HEARING - MOTION FOR
BLL #4 ORDER AUTHORIZING TRUSTEE TO
ENTER INTO SETTLEMENT AGREEMENT
AND ABANDON REAL PROPERTY
11-10-08 [33]

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

The motion will be granted.

The trustee seeks approval of a settlement agreement between the estate and the debtor. Under the terms of the settlement, the estate will abandon its interest in 300 acres in Butte County to the debtor, and the estate will receive at least \$66,317.74 plus as much as an additional \$10,000. These sums were derived from the sale of logs harvested from the 300 acres. The debtor waives any exemption as to funds payable to the estate. Counsel for the trustee, pursuant to a fee agreement previously approved by the court, will receive a 1/3 contingency fee.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. If the trustee was able to sell the 300 acres, after considering costs of sale, payment of encumbrances, and the debtor's homestead exemption, the estate would net approximately \$21,500. Further, a sale would likely not occur until next spring or summer, resulting in additional interest on obligations that could wipe out any equity for the estate. As to the money to be paid to the trustee, the debtor maintains that it represents proceeds from

the 300 acres and is covered by the debtor's exemptions. The settlement resolves these disputes and avoids the need for the estate to sell the subject property.

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

Byron Lynch ("Applicant"), attorney for the trustee, also seeks approval of his first and final application for approval of compensation. The requested compensation consists of \$22,105.91 (1/3 contingency fee on the \$66,317.74) and a further 1/3 contingency fee on the additional amount received on the logging contract, as much as \$3,333.33 (1/3 contingency fee on \$10,000). The court approved the Applicant's employment as the trustee's attorney on September 23, 2008.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by ... [a] professional person" and "reimbursement for actual, necessary expenses." The Applicant's services included, without limitation: (1) reviewing background documents; (2) conducting legal research about various issues in this case; (3) opposing the debtor's motion to convert; and (4) negotiating the subject settlement.

The court concludes that the compensation is for actual, necessary, and beneficial services rendered to the trustee in connection with the trustee's administration of this estate. Further, events subsequent to the approval of counsel's employment on a contingency fee basis have not made the contingency fee improvident. The compensation will be approved.

5. 08-29703-A-7 BRYAN/MELISSA HEYECK HEARING - MOTION FOR
BLL #5 ORDER APPROVING CONTINGENCY FEE
AND AUTHORIZING PAYMENT THEREOF
11-10-08 [37]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted for the reasons stated in the ruling of BLL-4. That ruling is incorporated by reference.

6. 08-32103-A-7 MEDARDO/MIRELLA ORTIZ HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
CHEVY CHASE BANK, FSB, VS. 11-13-08 [26]

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

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

The motion will be granted.

The movant, Chevy Chase Bank, seeks relief from the automatic stay with respect to real property in Suisun City, California. The property has a value of \$741,500 and is encumbered by claims totaling approximately \$1,267,409.61. The movant's deed is in first priority position and secures a claim of \$168,261.61.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 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. [08-32303](#)-A-7 FRANCISCO VILLANUEVA HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-13-08 [[22](#)]

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

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The debtor failed to pay a portion of an installment. However, the debtor paid that portion on November 14, 2008. No prejudice has resulted from the delay.

8. [08-33803](#)-A-7 PHUOC NGUYEN CONT. HEARING - DEBTOR'S
MOTION TO DISMISS CASE
10-6-08 [[7](#)]

Final Ruling: The motion will be dismissed.

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

The motion also has not been served on anyone, nor has the moving party filed and served a notice of hearing. The motion does not comply with Local Bankruptcy Rules 9014-1(d)(2) and (e)(3), which require that a motion be accompanied by a separate notice of hearing and a separate proof of service.

Finally, the motion has been superceded by a later filed motion requesting the same relief.

9. [08-33803](#)-A-7 PHUOC NGUYEN HEARING - MOTION TO
RDZ #1 DISMISS
11-24-08 [[17](#)]

Tentative Ruling: The motion will be granted.

Two petitions were erroneously filed for the debtor. This case is the second case filed. Given the pendency of the first case, and that this is a duplicate of the first, there is cause for dismissal of the second case.

10. [08-34404](#)-A-11 SUN MEADOWS 136, LLC HEARING - MOTION FOR
PSA #2 RELIEF FROM AUTOMATIC STAY
PFF BANK & TRUST, VS. 11-17-08 [[41](#)]

Tentative Ruling: The motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit U.S. Bank, as successor of PFF Bank, to conduct a foreclosure of and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's real property, a project consisting of 30 single family residence located within the Sun Meadows Retirement Community in Sacramento.

The subject property has a value of \$4,260,000 and is encumbered by the movant's claim which exceeds \$7,500,000. There is no equity in the property and no showing has been made by the debtor that the property is necessary to a reorganization that is in prospect. This is cause to terminate the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

11. [08-34404](#)-A-11 SUN MEADOWS 136, LLC CONT. STATUS CONFERENCE
10-6-08 [[1](#)]

Tentative Ruling: None.

12. [08-33706](#)-A-7 LUCY FARPELLA
KAT #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-18-08 [[18](#)]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, seeks relief from the automatic stay with respect to real property in Manteca, California. The property has a value of \$650,000 and is encumbered by the movant's deed which secures a claim of \$694,357.51.

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.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

13. [08-36006](#)-A-11 ALCHEMY AT R, LLC

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-20-08 [[38](#)]

Final Ruling: The order to show cause will be discharged.

The debtor failed to file all schedules and statements within 15 days of the filing of the petition as required by Fed. R. Bankr. R. 1007(c). This deadline ended on November 17. However, the schedules and statements were filed on November 24. No apparent prejudice resulted from the delayed filing. The case

will remain pending and no other sanctions will issue.

14. 08-36006-A-11 ALCHEMY AT R, LLC
PSA #1

HEARING - MOTION FOR
ORDER EXCUSING RECEIVER FROM
COMPLIANCE
11-12-08 [8]

Tentative Ruling: The motion will be denied.

U.S. Bank, as successor of PFF Bank, holds a deed of trust on real property being developed and sold by the debtor in possession. According to Schedule A, that property has a value of \$5,625,000, and according to the motion, the bank's secured claim totals approximately \$4,290,000. Schedule D lists other debts encumbering the property; all secured claims total approximately \$4,777,575.

A review of the docket reveals no pending motion for relief from the automatic stay and no motion for dismissal, the appointment of a trustee or examiner, or for the conversion of the case to chapter 7.

Before the case was filed, the bank filed suit in state court to obtain the appointment of a receiver. This motion asks that the receiver be excused from complying with 11 U.S.C. § 543(a) & (b) which requires him to relinquish possession of the property, as well as rents and profits collected from it, to the debtor in possession. This request is made pursuant to 11 U.S.C. § 543(d)(1) on the ground that the debtor in possession, prior to the filing of the case, failed to comply with state court receivership orders, failed construct the property consistent with applicable codes and fire standards, failed to insure the property, poorly managed it, and failed to insure it. The bank believes that the best interests of creditors would be served by allowing the receiver to remain in possession.

The court disagrees.

First, it appears that the debtor has procured insurance and has a professional property manager standing by.

Second, there is equity in the property and no showing has been made that the best interests of the equity security holders would be served by permitting the receiver to remain in place. See 11 U.S.C. § 543(d)(1).

Third, as noted by the debtor, every construction projects encounters problems and defects in construction. No showing has been made that the debtor is unable or unwilling to correct problems.

Fourth, given the equity in the property, it appears that the property is necessary to a reorganization that could be in prospect.

Fifth, allowing the receiver to remain in place and allowing the receivership action to move ahead, would completely gut any reorganization. The receivership is likely to benefit only one creditor, the bank.

Finally, the fact that the debtor breached contractual obligations prior to the petition means very little in this context. In bankruptcy, every debtor has, to one degree or another, breached a contract and perhaps a state court order.

In short, absent a strong indication that there is cause to dismiss the case,

convert it to chapter 7, appoint a trustee, or grant relief from the automatic stay, and that there is no such indication here, permitting a receiver to remain in place makes little sense given the Bankruptcy Code's policy of permitting current management to reorganize the business affairs of a debtor.

15. [08-36407](#)-A-7 LYDIA GONZALEZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-19-08 [6]

Tentative Ruling: The case will be dismissed.

The debtor did not file a Statement of Social Security Number, either with the petition or within 15 days of its filing, as required by Fed. R. Bankr. P. 1007(f). The court takes the debtor's social security number from this statement and includes it on the notice of the commencement of the case that is served on all creditors. Creditors frequently need the social security number to identify the debtor. Thus, the quality of notice may be substantially reduced and perhaps nullified by the absence of the social security number. See Ellett v. Goldberg (In re Ellett), 317 B.R. 134 (Bankr. E.D. Cal. 2004), *affirmed* 328 B.R. 205 (E.D. Cal. 2005), *affirmed* 506 F.3d 774 (9th Cir. 2007). As a result, the failure to file the Statement of Social Security Number may be cause for dismissal. See 11 U.S.C. § 707(a)(1). While the debtor in this case belatedly filed the statement on December 8, this was not in time for the court to include the social security number on the notice of the commencement of the case which was served on November 21. Thus, the late filing caused prejudice to creditors.

16. [08-35408](#)-A-7 PRINCESS CORNWELL HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-17-08 [9]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, seeks relief from the automatic stay with respect to real property in Vallejo, California. The property has a value of \$179,000 and is encumbered by claims totaling approximately \$340,053.54. The movant's deed of trust is in first priority position and secures a claim of \$335,053.54.

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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

17. 08-30709-A-7 MICHAEL BUNNING HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AMERICA'S SERVICING CO., VS. 11-20-08 [15]

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

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

The movant, America's Servicing Company, seeks relief from the automatic stay as to real property in Granite Bay, California.

Given the entry of the debtor's discharge on November 21, 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 \$625,000 and is encumbered by claims totaling approximately \$873,935.71. The movant's deed is in first priority position and secures a claim of \$622,635.71.

The court concludes that there is no equity in the property 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 the 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 enforcement of

The motion will be granted.

The movant, Nationpoint, seeks relief from the automatic stay with respect to real property in West Sacramento, California. The property has a value of \$297,500 and is encumbered by claims totaling approximately \$383,292.03. The movant's deed is in first priority position and secures a claim of \$307,547.03.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

19. 08-25810-A-11 THE O'BRYAN COMPANY, INC. HEARING - OBJECTION TO
AGT #10 CLAIM OF COLOPLAST CORPORATION
11-14-08 [[201](#)]

Final Ruling: The objection will be dismissed without prejudice.

This objection was served on the claimant on November 14. The notice of the hearing on the objection indicated that the hearing would take place on December 15 and that a written response was necessary if the claimant wished to contest the objection. That written response had to be filed and served no later than 14 days prior to the hearing. Hence, the claimant received 31 days' notice of the hearing and 17 days' notice of the deadline for a written response to the objection.

This notice did not comply with Local Bankruptcy Rule 3007-1 or Fed. R. Bankr. R. 3007. Local Bankruptcy Rule 3007-1(c)(1) requires that 44 days of notice be given of a hearing on a claim objection if the objecting party wishes to compel the claimant to file a written response to the objection 14 days prior to the hearing. Otherwise, the objecting party may give 30 days' notice of the hearing on the objection but the claimant is not required to file a written response. This local rule is consistent with Fed. R. Bankr. R. 3007 which requires at least 30 days notice of a hearing on an objection. Because the national rule does not require a written response to the objection, the local rule adds 14 days to the 30-day notice period if the objecting party wishes to compel a written response.

The local rule leaves it up to the objecting party which of these two procedures it wishes to utilize. In this case, however, the objecting party

gave less than 44 days of notice and so the claimant was not required to file a written response. Because the notice stated otherwise, notice is defective.

20. [08-25810](#)-A-11 THE O'BRYAN COMPANY, INC. HEARING - OBJECTION TO
AGT #11 CLAIM OF SPRINT NEXTEL
11-14-08 [207]

Final Ruling: The objection will be dismissed without prejudice.

This objection was served on the claimant on November 14. The notice of the hearing on the objection indicated that the hearing would take place on December 15 and that a written response was necessary if the claimant wished to contest the objection. That written response had to be filed and served no later than 14 days prior to the hearing. Hence, the claimant received 31 days' notice of the hearing and 17 days' notice of the deadline for a written response to the objection.

This notice did not comply with Local Bankruptcy Rule 3007-1 or Fed. R. Bankr. R. 3007. Local Bankruptcy Rule 3007-1(c)(1) requires that 44 days of notice be given of a hearing on a claim objection if the objecting party wishes to compel the claimant to file a written response to the objection 14 days prior to the hearing. Otherwise, the objecting party may give 30 days' notice of the hearing on the objection but the claimant is not required to file a written response. This local rule is consistent with Fed. R. Bankr. R. 3007 which requires at least 30 days notice of a hearing on an objection. Because the national rule does not require a written response to the objection, the local rule adds 14 days to the 30-day notice period if the objecting party wishes to compel a written response.

The local rule leaves it up to the objecting party which of these two procedures it wishes to utilize. In this case, however, the objecting party gave less than 44 days of notice and so the claimant was not required to file a written response. Because the notice stated otherwise, notice is defective.

21. [08-29210](#)-A-7 ARACELI MEJIA HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-5-08 [20]

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

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

The movant, Mortgage Electronic Registration Systems, seeks relief from the automatic stay as to real property in Pittsburg, California.

Given the entry of the debtor's discharge on October 14, 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 \$299,000 and is encumbered by the movant's claim of \$478,247.57.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

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

22. [08-35711](#)-A-11 ANNETTE HORNSBY
JMS #1
U.S. BANK N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-17-08 [[21](#)]

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

The motion will be granted in part.

Insofar as the motion requests the termination of the automatic stay, the motion will be dismissed because it is moot because the automatic stay never went into effect in this case. See 11 U.S.C. § 362(c)(4).

This case was filed on October 29, 2008. With the previous year, the debtor had at least two other cases pending that were dismissed, Case No. 08-29857 and Case No. 08-41908 (Northern District of California).

When an individual debtor has filed 2 or more prior cases that were pending during the previous year, but were dismissed, the automatic stay never goes

the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

24. [08-34613](#)-A-7 ISMAEL/ALICIA PEREZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-19-08 [[18](#)]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to attend a meeting of creditors scheduled for and held on November 18, 2008. Accordingly, the petition will be dismissed for failure to attend the meeting of creditors as required by 11 U.S.C. § 343. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

25. [08-30514](#)-A-7 AHMAD/DIANA NOORI HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-5-08 [[19](#)]

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

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

The movant, Mortgage Electronic Registration Systems, seeks relief from the automatic stay as to real property in Galt, California.

Given the entry of the debtor's discharge on November 19, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of \$350,757 and is encumbered by claims totaling approximately \$443,474.97. The movant's deed is in first priority position and secures a claim of \$358,135.97.

The court concludes that there is no equity in the property 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 the sale. No other relief is awarded.

Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

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

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

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

The 10-day period specified in Fed. R. Bankr. P. 4001(a) (3) is not waived. That period, however, shall run concurrently with the 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. [08-35615](#)-A-7 GABOR/GAIL MORICZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-17-08 [[11](#)]

Final Ruling: The order to show cause will be discharged.

Counsel for the debtor failed to file the disclosure statement required by 11 U.S.C. § 329 and Fed. R. Bankr. P. 2016 with the petition or within 15 days of its filing as required by Rule 2016(b). However, it was belatedly filed on November 25. No prejudice resulted from the late filing.

28. [08-35716](#)-A-7 RICHARD/STACEY ATENCIO HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
AMERICAN HOME MORTGAGE SVCING., INC., VS. 11-24-08 [[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, American Home Mortgage, seeks relief from the automatic stay with respect to real property in Red Bluff, California. The property has a value of \$237,000 and is encumbered by claims totaling approximately \$323,344.10. The movant's deed is in first priority position and secures a claim of \$261,375.63.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 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. 08-25418-A-7 AGUSTIN/ELIZABETH DELGADO HEARING - MOTION TO
SSA #2 COMPROMISE CLAIMS
11-3-08 [[39](#)]

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 debtor, 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.

The trustee seeks approval of a settlement agreement resolving state court litigation initiated by the debtor prior to the filing of the petition. That litigation asserted claims against third parties arising out of the purchase of a manufactured home. Under the terms of the settlement, the estate will

receive \$12,500 in exchange for the dismissal of the suit. From the \$12,500, \$1,500 will be paid to the debtor in satisfaction of an exemption claim and \$1,500 will be paid to the debtor's attorney to satisfy amounts owed for pre-petition representation and secured by an attorney's lien on any recovery.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. While the claims in litigation are likely meritorious, the defendants are uninsured and one of the defendants has filed bankruptcy. The prospects of collecting a large judgment are not good. Proceeding further in the litigation will also require additional discovery including the retention of experts. Litigation expenses could approach \$25,000. Given the foregoing, the proposed settlement is in the best interests of creditors and the debtor.

30. 08-26918-A-7 JUSTODIO GARIBAY HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-10-08 [60]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to attend a meeting of creditors scheduled for and held on November 4, 2008. Accordingly, the petition will be dismissed for failure to attend the meeting of creditors as required by 11 U.S.C. § 343. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

31. 08-36418-A-7 ANTONIO/JANETH FERNANDEZ HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK FSB, VS. 11-20-08 [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, IndyMac Bank, seeks relief from the automatic stay with respect to real property in Elk Grove, California. The property has a value of \$212,000

and is encumbered by claims totaling approximately \$336,534.37. The movant's deed is in first priority position and secures a claim of \$272,018.37.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

32. 08-35219-A-7 JUSTIN/HEATHER RUNYAN HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 11-26-08 [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, JP Morgan Chase Bank, seeks relief from the automatic stay with respect to real property in Lincoln, California. The property has a value of \$303,000 and is encumbered by claims totaling approximately \$390,909.98. The movant's deed is in first priority position and secures a claim of \$349,909.98.

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

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 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. 08-36319-A-7 ANNA/JOSHUA SIMMONS HEARING - MOTION FOR
EDH #1 RELIEF FROM AUTOMATIC STAY
HSBC BANK USA, N.A., VS. 11-15-08 [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, HSBC Bank, seeks relief from the automatic stay with respect to real property in Chico, California. The property has a value of \$270,000 and is encumbered by the movant's claim of \$340,256.36.

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.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 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. 08-32420-A-7 MARIE BROOKS HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
HSBC MORTGAGE SERVICES, VS. 11-24-08 [13]

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

The motion will be granted.

The movant, HSBC Mortgage, seeks relief from the automatic stay with respect to real property in Sacramento, California. The property has a value of \$200,000 and is encumbered by claims totaling approximately \$362,851.90. The movant's deed is in first priority position and secures a claim of \$293,351.90.

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

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 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. 08-33321-A-7 GARY/MARY SPECK HEARING - MOTION FOR
APN #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO AUTO FINANCE, VS. 11-13-08 [21]

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

The motion will be dismissed as moot.

The movant, Wells Fargo Auto Finance, seeks relief from the automatic stay with respect to a 2006 Volkswagen Beetle.

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). If the debtor states an intention to reaffirm or redeem, the debtor must perform that intention within 30 days of the date first set for the meeting of creditors. See 11 U.S.C. § 521(a)(2)(B).

The petition here was filed on September 18, 2008 and a meeting of creditors was first convened on October 30, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than October 18, 2008. The debtor filed a statement of intention on the petition date, indicating an intent to "reaffirm" the debt owed to the movant. However, a review of the docket reveals that no motion to redeem or to reaffirm the debt was filed within 30 days of the conclusion of the meeting, or at all. The debtor has not requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on November 29, 30 days after the initial meeting date.

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).

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 November 29, 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.

The movant shall bear its own fees and costs.

36. 08-28625-A-7 MIGUEL/MARTHA GUTIERREZ
MAR #2

CONT. HEARING - TRUSTEE'S MOTION
TO COMPEL TURNOVER OF REAL AND
PERSONAL PROPERTY OF THE ESTATE
AND IMPOSITION OF EQUITABLE
SURCHARGE
10-21-08 [64]

Tentative Ruling: The objection to the debtors' original and November 5 exemptions will be sustained in part with the proviso stated in the penultimate and last paragraphs of this ruling.

The trustee objects to three exemption claimed by the debtors: (1) an exemption in the amount of \$136,000 pursuant to Cal. Civ. Proc. Code § 703.140(b)(5), in an unimproved residential lot in Vallejo, California; (2) an exemption in the amount of \$17,500 pursuant to Cal. Civ. Proc. Code § 703.140(b)(5), in real estate sales commissions; and (3) an exemption in 75% of \$70,000 in sales commissions, pursuant to 15 U.S.C. § 1673. The trustee argues that the debtors have fully exhausted their exemptions under Cal. Civ. Proc. Code § 703.140(b)(1) and (5), but for \$949, and that 15 U.S.C. § 1673 is not an applicable exemption statute. The trustee also alleges that the debtors failed to disclose their interest in the real estate commissions when they filed their original schedules on July 11, 2008 and as a result should be penalized by disallowing any exemption in those commissions.

The debtors maintain that they did not conceal any assets from the trustee or creditors, that they did not fail to disclose their interest in the commissions, and that the commissions represent their income and only source of support.

The debtors filed their bankruptcy petition on June 27, 2008. Their schedules were filed on July 11. The debtors amended their Schedules B and C on September 9. After the trustee filed this objection and the related turnover motion, the debtors amended Schedules B and C once again on November 5.

Debtor Miguel Gutierrez is a self-employed handyman and his spouse, Martha Gutierrez, is a self-employed realtor.

Before delving into the merits of this objection, the court notes that the November 5 amendment to Schedule C does not contain a claim of exemption in the unimproved lot in Vallejo, California and it amends the exemption in the commissions to \$30,632 pursuant to 15 U.S.C. § 1673 and \$10,210.67 pursuant to Cal. Civ. Proc. Code § 703.140(b)(5). In light of this amendment, the trustee's objection to the exemption claim in the residential lot will be dismissed as moot.

To address the remaining objections, the first step is to determine which, if any, of the commissions are property of the estate.

11 U.S.C. § 541(a)(1) provides that property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." This includes wages and commissions earned before the filing of the petition. See 11 U.S.C. § 541(a)(6); see also Tully v. Taxel (In re Tully), 202 B.R. 481, 484 (B.A.P. 9th Cir. 1996); In re Braddy, 226 B.R. 479, 480-81 (Bankr. N.D. Fla. 1998).

In determining whether commissions collected post-petition are property of the estate, courts generally consider the ratio of work performed pre and post-petition, required for the earning of the commissions, and whether the commissions are conditioned on the debtor's performance of future services. Braddy at 481; Tully at 484.

Under California law, a broker is entitled to commissions in contracts for the purchase of real estate when the broker locates a buyer who is ready, willing, and able to purchase the property on terms acceptable to the seller. Tully at 483-84 (citing Collins v. Vickter Manor, Inc., 47 Cal. 2d 875, 880 (1957)). The closing of escrow merely dictates the time for the payment of the commission. Tully at 485. The issue then is whether, at the time they filed for bankruptcy, the debtors had satisfied their obligations under the pending purchase contracts, entitling them to the commissions under those contracts. Stated differently, had the debtors located a buyer who was ready, willing, and able to purchase the property on terms acceptable to the seller, at the time the debtors filed their bankruptcy petition.

In his motion to compel turnover, the trustee references contracts for the purchase of six real properties:

The escrow for the purchase of Whitney Avenue in Vallejo, the contract for which was executed on May 30, 2008, closed post-petition on July 10, 13 days after the petition filing. See Exhibit C to Declaration of Prem Dhawan, docket control no. MAR-2. The debtors' portion of the commissions total \$13,787.17.

The escrow for the purchase of Stonegate Way in Antioch, the contract for which was executed on May 23, 2008, closed post-petition on July 24, 27 days after the petition filing. See Exhibit C to Declaration of Prem Dhawan, docket control no. MAR-2. The debtors' portion of the commissions total \$8,137.50.

The escrow for the purchase of Darley Drive in Vallejo, the contract for which was executed on or about June 4, 2008, closed post-petition on August 25, 59 days after the petition filing. See Exhibit C to Declaration of Prem Dhawan, docket control no. MAR-2. The debtors' portion of the commissions total \$11,997.

Because escrow for the above three properties was opened pre-petition, the court concludes that the debtors became entitled to the commissions from those contracts pre-petition and that the commissions, totaling \$33,921.67, are property of the estate. In connection with this, the court also notes that the debtors have proffered no evidence that any of the purchase contracts in this motion are atypical of customary purchase agreements and that they required post-contract execution work for the debtors to become entitled to the commissions.

The trustee alleges that escrow for the purchase of Fisk Court in Vallejo closed post-petition and the debtors are owed \$8,225 in commissions. But, the debtors deny that this escrow ever closed. They contend that the property fell out of escrow because the bank did not fund the loan. See Debtors' Reply to Motion to Compel Turnover at 6, ¶ 5. The court also notes that the trustee has not provided any evidence, such as was provided for the foregoing properties, that escrow closed on Fisk Court in Vallejo. Therefore, the escrow on Fisk Court in Vallejo is no longer active and the debtors will be receiving no commissions from this escrow.

Although escrow for the purchase of 4th Street in Richmond was opened pre-

petition on June 7, the property fell out of escrow on June 28. A new buyer was secured for the property post-petition, on July 1. This means that the debtors became entitled to the commissions from the latter escrow post-petition. Thus, the commissions are not property of the estate. See Exhibits D & E to Declaration of Prem Dhawan, docket control no. MAR-2.

Finally, the trustee has admitted that the sales transaction on Garibaldi Drive in Vallejo has been terminated and that the debtors are not owed a commission.

The trustee maintains that the debtors are not entitled to claim exemptions pursuant to 15 U.S.C. § 1673 because that statute is not part of the exemption scheme in California. Moreover, California has opted out of the federal exemption scheme contained in the Bankruptcy Code. See e.g., In re Gose, 308 B.R. 41, 44 (B.A.P. 9th Cir. 2004). Thus, the debtor's reliance on federal statutes is misplaced according to the trustee.

The trustee is incorrect. Cal. Civ. Proc. Code § 703.140(a) precludes Californians filing bankruptcy petitions from claiming exemptions under title 11 only. The exemption claimed here is in title 15.

"If the state of the debtor's domicile has opted out of the federal exemption system or if the debtor chooses to select exemptions from nonbankruptcy law, then those state exemptions are supplemented by other specific exemptions set forth outside the Bankruptcy Code." Collier on Bankruptcy, § 522.02[3], p. 522-30 (15th ed. rev.).

The trustee does correctly note, however, that 15 U.S.C. § 1673 is not a federal exemption that is applicable in bankruptcy cases. See Kokoszka v. Belford, 417 U.S. 642, 650 (1974); In re Riendeau, 293 B.R. 832 (D. Vt. 2002), affirmed, 336 F.3d 78 (2nd Cir. 2003); In re Brissette, 561 F.2d 779, 786 (9th Cir. 1977).

However, it is curious that the trustee did not cite the Brissette decision from the Ninth Circuit in his objection. This is undoubtedly because the Ninth Circuit, while agreeing that 15 U.S.C. § 1673 is not applicable in bankruptcy cases, went on to conclude that the parallel exemption applicable in wage garnishments under California law, Cal. Civ. Proc. Code § 690.6 (repealed), could be claimed in bankruptcy cases. Id. Cal. Civ. Proc. Code § 690.6 is now replaced by Cal. Civ. Proc. Code §§ 706.050, 706.051, and 706.052. And, this new exemption may be claimed even though a bankruptcy debtor has opted to take the exemptions allowed by Cal. Civ. Proc. Code § 703.140 because that section only precludes a debtor from claiming the other California exemptions "provided by this chapter". The exemption from garnishments is found in chapter 5, while section 703.140 is found in chapter 4; both are chapters in Division 2, Enforcement of Money Judgments. Hence, the debtors may be able to claim this exemption, despite claiming exemptions under section 703.140.

Because the debtors may not claim 15 U.S.C. § 1673 as a federal exemption in a bankruptcy case, this objection will be sustained. The court will sustain the trustee's objection to the exemption of \$30,632 in "[e]arned wages from commissions" pursuant 15 U.S.C. § 1673. This is, however, without prejudice to a further amendment of Schedule C by the debtors.

The debtors also have claimed an exemption in \$10,210.67 of "[e]arned wages from commissions," pursuant to Cal. Civ. Proc. Code § 703.140(b)(5). Cal. Civ. Proc. Code § 703.140(b)(5) limits exemption amounts to \$1,100 plus any unused amount of the exemption in Cal. Civ. Proc. Code § 703.140(b)(1), which

currently caps exemptions to \$20,725. Hence, the total amount a debtor may exempt under Cal. Civ. Proc. Code § 703.140(b)(5) is \$21,825 (\$1,100 plus \$20,725, the maximum unused amount of (b)(1)). However, the total exemption amount used by the debtors under their November 5 amendments to Schedule C, pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) and (5), is only \$13,710.67. This amount is within the statutory maximum allowable under those statutes.

Further, to the extent the trustee objects to the exemption of the commissions on the basis that the debtors failed to disclose them on the original schedules or attempted to hide them from him, the court does not believe the debtor attempted to conceal the commissions from the trustee. While they did not list them in their original July 11 schedules, the debtors disclosed the commissions to the trustee at the meeting of creditors. Also, the record contains adequate evidence that the debtors provided the trustee with requested documents concerning the exemptions. Although the debtors have made a claim of exemption that lacked merit, there is no persuasive evidence that they intended to conceal the commissions. Accordingly, the court will overrule this objection to the exemption of the commissions.

Lastly, the reply filed by the trustee on November 12 will be stricken by the court because it is untimely. Local Bankruptcy Rule 9014-1(f)(1)(iii) required that the reply be filed by November 11. While November 11 was a court holiday, this meant that the reply should have been filed on November 10. That is, counting backward from the hearing date, the reply was due seven days earlier. Because the seventh day was a holiday, it was due one day earlier.

To the extent this reply contains objections not presented in the original objection that pertain to the amended exemptions claimed on November 5, this ruling is without prejudice to the trustee setting a hearing on the new objections to the amended exemptions. It is also without prejudice to any amended exemptions claimed by the debtors after November 5 and to any additional objections the trustee may have to those exemptions.

However, given the Trustee's Statement in Non-opposition to Debtors' Fourth Amended Exemptions, etc., it now appears that the trustee and the debtors are in agreement that given this ruling and the latest exemptions, the debtors must turnover to the trustee \$14,517.67. This amount is admittedly not exempt and the remaining property is exempt.

37. [08-28625](#)-A-7 MIGUEL/MARTHA GUTIERREZ HEARING - MOTION FOR
DRT #17 RELIEF FROM AUTOMATIC STAY
ROBERT KAMP, VS. 11-17-08 [[91](#)]

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

The movant, Robert Kamp, seeks relief from the automatic stay as to real property, a vacant lot and a building, both located in Vallejo, California.

Given the entry of the debtor's discharge on October 7, 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 combined value of approximately \$750,000. The building is encumbered by liens totaling more than \$1 million and the movant's lien is in fourth priority position. The vacant lot is encumbered by the movant's claim in excess of \$150,000, which

exceeds the value of the lot.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

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

38. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - DEBTOR'S MOTION TO
WFH #21 SELL REAL PROPERTY FREE AND CLEAR
OF LIENS
11-17-08 [321]

Tentative Ruling: The motion will be granted.

The debtor in possession seeks authorization to sell the real property located at 150 W. Turner Rd., Lodi, California, free and clear of all liens, for \$495,000. Customary closing costs and commissions will be paid from the sale price. The estate expects to net \$451,000. The sale is subject to overbids.

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

Under 11 U.S.C. § 363(f), the trustee, and a debtor in possession, may sell property of the estate free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens; 2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money satisfaction of the lien.

Farmers and Merchants Bank holds a deed of trust securing an obligation exceeding the sale price. However, it consents to the sale provided the net proceeds are segregated and its lien attaches to those proceeds.

The liens of Prima Flora and BFI are in bona fide dispute for the reasons argued in the motion. However, until it is determined that their liens are not valid, they, as well as the lien of the Bank, shall attach to the net proceeds in the order of their pre-petition priority.

39. [08-33128](#)-A-7 ANNA BIANCHINI HEARING - MOTION FOR
APN #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO AUTO FINANCE, VS. 11-13-08 [[14](#)]

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

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle it leased to the debtor, 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.

Neither the estate nor the debtor have performed the lease since September 2008 and neither have attempted to assume the lease. This breach of the lease, the failure of the trustee to assume the lease within 60-days after the order for relief, and the failure of the debtor to assume the lease within 30-days of the expiration of the 60-day period is cause to terminate the automatic stay. See 11 U.S.C. §§ 365(d)(1), 365(p)(2).

Because the movant has not established that it holds an over-secured claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

40. [08-34728](#)-A-7 OTIS/SHARON CROCKETTE HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MORTGAGE CO., VS. 11-7-08 [[9](#)]

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

The motion will be granted.

The movant, National City Mortgage, seeks relief from the automatic stay with respect to real property in Sacramento, California. The property has a value of \$230,000 and is encumbered by claims totaling approximately \$430,000. The movant's deed is in first priority position and secures a claim of \$327,357.97.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

41. [08-33129](#)-A-7 ANTHONY GOMEZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-17-08 [\[11\]](#)

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to attend a meeting of creditors scheduled for and held on November 13, 2008. Accordingly, the petition will be dismissed for failure to attend the meeting of creditors as required by 11 U.S.C. § 343. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

42. [08-29930](#)-A-7 REBEKAH HOEKSTRA HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AMERICA'S SERVICING CO., VS. 11-20-08 [\[11\]](#)

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, America's Servicing Company, seeks relief from the automatic stay with respect to real property in Redding, California. The property has a value of \$400,000 and is encumbered by claims totaling approximately \$473,000. The

movant's deed is in first priority position and secures a claim of \$423,189.09.

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

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 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. 08-30930-A-7 BRIAN PORTER
DMM #1
WACHOVIA MORTGAGE, FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-14-08 [[26](#)]

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

The motion will be granted.

The movant, Wachovia Mortgage, seeks relief from the automatic stay with respect to real property in Elk Grove, California. The property has a value of \$300,000 and is encumbered by the movant's claim of \$566,126.66.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

45. [08-29131](#)-A-7 PAUL LEONARD
MBB #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-10-08 [[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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

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

The movant, Mortgage Electronic Registration Systems, seeks relief from the automatic stay as to real property in Willows, California.

Given the entry of the debtor's discharge on November 10, 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 \$180,000 and is encumbered by claims totaling approximately \$268,246.81. The movant's deed is in first priority position and secures a claim of \$207,511.81.

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.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

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

46. [08-31331](#)-A-7 PETE SCARBOUROGH
DGN #1
FORD MOTOR CREDIT CO., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-26-08 [[49](#)]

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 dismissed as moot.

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

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). If the debtor states an intention to reaffirm or redeem, the debtor must perform the intention within 30 days of the date first set for the meeting of creditors. See 11 U.S.C. § 521(a)(2)(B).

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).

The petition here was converted to chapter 7 on September 2, 2008 and a meeting of creditors was first convened on October 9, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than October 2, 2008. The debtor filed a statement of intention on September 3 indicating an intent to "reaffirm" the vehicle. However, no reaffirmation agreement or motion to redeem has been filed. As a result, the automatic stay automatically terminated on November 8, 2008, 30 days after the meeting.

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

November 8, 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.

The movant shall bear its own fees and costs.

47. 08-32731-A-7 JUAN/MARIA OLIVAS HEARING - MOTION FOR
ASW #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-4-08 [22]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, seeks relief from the automatic stay with respect to real property in Tracy, California. The property has a value of \$230,000 and is encumbered by claims totaling approximately \$383,866.24. The movant's deed is in first priority position and secures a claim of \$322,447.93.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

orders terminating the automatic stay.

48. [08-25333](#)-A-7 LORRAINE LUNDT HEARING - MOTION FOR
JLS #2 RELIEF FROM AUTOMATIC STAY
BAR-K, INC., VS. 11-3-08 [[70](#)]

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

The motion will be granted.

The movant, Bar-K, Inc., seeks relief from the automatic stay with respect to real property in Granite Bay, California. The property has a value of \$400,000 and is encumbered by the movant's claim of \$440,435.04.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

49. [08-34533](#)-A-7 KENRY BAILEY, III HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-18-08 [[21](#)]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to attend a meeting of creditors scheduled for and held on November 17, 2008. Accordingly, the petition will be dismissed for failure to attend the meeting of creditors as required by 11 U.S.C. § 343. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

50. [08-31535](#)-A-7 RICK MITCHELL
MBB #1
COUNTRYWIDE HOME LOANS, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-17-08 [[14](#)]

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

The motion will be granted.

The movant, Countrywide, seeks relief from the automatic stay with respect to real property in Sacramento, California. The property has a value of \$150,000 and is encumbered by claims totaling approximately \$300,000. The movant's deed is in first priority position and secures a claim of \$255,944.97.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

51. [08-35636](#)-A-7 JEFFERY PETERSON

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-17-08 [[10](#)]

Final Ruling: The order to show cause will be discharged.

An order to show cause was issued because the debtor failed to file a certificate for credit counseling as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). Nonetheless, after issuance of the order to show cause, the debtor filed the certificate. No prejudice has resulted from the delay.

52. [08-32137](#)-A-7 ANTONIO/ADORACION RET
RCO #1
BANK OF AMERICA, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-7-08 [[19](#)]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay with respect to real property in Vallejo, California. The property has a value of \$300,000 and is encumbered by claims totaling approximately \$672,000. The movant's deed is in first priority position and secures a claim of \$472,892.32.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

53. [08-35237](#)-A-7 VINCENT/CHERYL RIOUX

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-13-08 [[9](#)]

Final Ruling: The order to show cause will be discharged.

An order to show cause was issued because the debtor failed to file Exhibit D to the petition together with a certificate for credit counseling as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). Nonetheless, after issuance of the order to show cause, the debtor filed Exhibit D with the certificate. No prejudice has resulted from the delay.

54. [08-36139](#)-A-7 ROWANIA BEASON

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-19-08 [7]

Tentative Ruling: The case will be dismissed.

The debtor failed to file a master address list with the petition as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. The deadline for filing the list has expired and the notice of the commencement of this bankruptcy case was served on November 21. Because no master address list has been filed, the notice was not served on all creditors. As a result, they were not notified that the case had been filed nor did they receive notice of the various deadlines for filing complaints, objecting to exemptions, and filing proofs of claims. To permit the case to remain pending would be unfair to all creditors. See 11 U.S.C. § 707(a)(1). Accordingly, the petition will be dismissed.

55. [08-36139](#)-A-7 ROWANIA BEASON
ND #1
SAXON MORTGAGE SERVICES, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-1-08 [16]

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

The motion will be granted.

The movant, Saxon Mortgage, seeks relief from the automatic stay with respect to real property in Stockton, California. The property has a value of \$140,000 and is encumbered by claims totaling approximately \$400,104.75. The movant's deed is in first priority position and secures a claim of \$355,604.75.

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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. §

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, seeks relief from the automatic stay with respect to real property in Manteca, California. The property has a value of \$181,000 and is encumbered by claims totaling approximately \$427,000. The movant's deed is in first priority position and secures a claim of \$344,069.17.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

58. 08-35342-A-7 TITUS THOMAS

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-25-08 [11]

Tentative Ruling: The order to show cause will be discharged as moot due to the prior automatic dismissal of the case pursuant to 11 U.S.C. § 521(i)(1). Nonetheless, the court will enter an order confirming such dismissal.

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

If an individual debtor in a voluntary chapter 7 case or in a chapter 13 case fails to file "all of the information required under" section 521(a)(1) [list of creditors, schedule of assets and liabilities, schedule of current income

and current expenditures, statement of financial affairs with section 342(b) certificate, copies of employer payment advices, statement of monthly net income, statement of reasonably anticipated increases in income or expenditures] within 45 days of the filing of the petition, the case "shall be automatically dismissed effective on the 46th day." See 11 U.S.C. § 521(i)(1). The 45th day was December 7 and the missing documents had not been filed. Thus, the petition was automatically dismissed effective on December 8, the 46th day after the petition filing.

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

59. [08-36342](#)-A-7 ROBERT YOUNG HEARING - MOTION FOR
MDE #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST CO., VS. 11-26-08 [8]

Final Ruling: The hearing has been continued to December 22, 2008 at 9:00 a.m.

60. [08-27043](#)-A-7 MARY BAZIL CONT. HEARING - DEBTORS' MOTION TO
DCR #1 AVOID A JUDICIAL LIEN THAT IMPAIRS
VS. BENEFICIAL CALIFORNIA, INC. AN EXEMPTION
9-9-08 [17]

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor in favor of Beneficial California, Inc., for the sum of \$10,300.49 on August 1, 2007. The abstract of judgment was recorded in the county where the debtor resides. That lien attached to the debtor's residence located in Granite Bay, California.

As indicated in Schedule A, the subject real property had a value of \$595,000 as of the date of the petition. The unavoidable consensual liens total \$525,510 on that same date, consisting of: a first deed of trust in favor of New Century Mortgage Company, securing a claim of \$435,918; a second deed of trust in favor of Placer Savings, securing a claim of \$29,592; and a third deed of trust in favor of Richard Sauer, securing a claim of \$60,000. In addition, the unavoidable non-consensual liens total \$38,748.95, consisting of: a lien in favor of the IRS, securing a claim of \$10,097.91; a lien in favor of the California SBE, securing a claim of \$2,434.56; a lien in favor of the California SBE, securing a claim of \$20,799.26; and a lien in favor of the California FTB, securing a claim of \$5,417.22.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$595,000 as of the date of the petition. The unavoidable liens total in excess of 563,000. The debtor has an available exemption of \$50,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

61. [08-27043](#)-A-7 MARY BAZIL
DCR #2
VS. THE CIT/GROUP/COMMERCIAL SVCS., INC.

CONT. HEARING - DEBTORS' MOTION TO
AVOID A JUDICIAL LIEN THAT IMPAIRS
AN EXEMPTION
9-9-08 [[22](#)]

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor in favor of The CIT Group, for the sum of \$5,911.30 on June 27, 2005. The abstract of judgment was recorded with Placer County on July 28, 2005. That lien attached to the debtor's residential real property located in Granite Bay, California.

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$595,000 as of the date of the petition. The unavoidable consensual liens total \$525,510 on that same date, consisting of: a first deed of trust in favor of New Century Mortgage Company, securing a claim of \$435,918; a second deed of trust in favor of Placer Savings, securing a claim of \$29,592; and a third deed of trust in favor of Richard Sauer, securing a claim of \$60,000. In addition, the unavoidable non-consensual liens total \$38,748.95, consisting of: a lien in favor of the IRS, securing a claim of \$10,097.91; a lien in favor of the California SBE, securing a claim of \$2,434.56; a lien in favor of the California SBE, securing a claim of \$20,799.26; and a lien in favor of the California FTB, securing a claim of \$5,417.22.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$595,000 as of the date of the petition. The unavoidable liens total in excess of 563,000. The debtor has an available exemption of \$50,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

62. [08-27043](#)-A-7 MARY BAZIL
DCR #3
VS. NORTHERN CALIFORNIA COLLECTION, INC.

CONT. HEARING - DEBTORS' MOTION TO
AVOID A JUDICIAL LIEN THAT IMPAIRS
AN EXEMPTION
9-9-08 [[27](#)]

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor in favor of Northern California Collection, Inc., for the sum of \$6,585.82 on November 17, 2006. The abstract of judgment was recorded with the county where the debtor resides. That lien attached to the debtor's residential real property located in Granite Bay, California.

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$595,000 as of the date of the petition. The unavoidable consensual liens total \$525,510 on that same date, consisting of: a first deed of trust in favor of New Century Mortgage Company, securing a claim of \$435,918; a second deed of trust in favor of Placer Savings, securing a claim of \$29,592; and a third deed of trust in favor of Richard Sauer, securing a claim of \$60,000. In addition, the unavoidable non-consensual liens total \$38,748.95, consisting of: a lien in favor of the IRS, securing a claim of

\$10,097.91; a lien in favor of the California SBE, securing a claim of \$2,434.56; a lien in favor of the California SBE, securing a claim of \$20,799.26; and a lien in favor of the California FTB, securing a claim of \$5,417.22.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$595,000 as of the date of the petition. The unavoidable liens total in excess of 563,000. The debtor has an available exemption of \$50,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

63. 08-27043-A-7 MARY BAZIL
DCR #4
VS. LVNV FUNDING LLC

CONT. HEARING - DEBTORS' MOTION TO
AVOID A JUDICIAL LIEN THAT IMPAIRS
AN EXEMPTION
9-9-08 [[32](#)]

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor in favor of LVNV Funding, LLC, for the sum of \$17,768.71 on May 7, 2007. The abstract of judgment was recorded with the county where the debtor resides. That lien attached to the debtor's residential real property located in Granite Bay, California.

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$595,000 as of the date of the petition. The unavoidable consensual liens total \$525,510 on that same date, consisting of: a first deed of trust in favor of New Century Mortgage Company, securing a claim of \$435,918; a second deed of trust in favor of Placer Savings, securing a claim of \$29,592; and a third deed of trust in favor of Richard Sauer, securing a claim of \$60,000. In addition, the unavoidable non-consensual liens total \$38,748.95, consisting of: a lien in favor of the IRS, securing a claim of \$10,097.91; a lien in favor of the California SBE, securing a claim of \$2,434.56; a lien in favor of the California SBE, securing a claim of \$20,799.26; and a lien in favor of the California FTB, securing a claim of \$5,417.22.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$595,000 as of the date of the petition. The unavoidable liens total in excess of 563,000. The debtor has an available exemption of \$50,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

64. [08-27043](#)-A-7 MARY BAZIL
DCR #5
VS. LEWIS MILLER & COMPANY, INC.

CONT. HEARING - DEBTORS' MOTION TO
AVOID A JUDICIAL LIEN THAT IMPAIRS
AN EXEMPTION
9-9-08 [[37](#)]

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor in favor of Lewis, Miller & Company, for the sum of \$2,088.88 on May 19, 2006. The abstract of judgment was recorded with Placer County on June 29, 2006. See Exhibit to Declaration of Brian Miller in Opposition to Motion. That lien attached to the debtor's residential real property located in Granite Bay, California.

LMC has filed an opposition, arguing that: (1) its lien cannot be avoided as a preference; (2) the deed against the property in favor of Richard Sauer is vague and should not be paid; (3) the debtor has undervalued the property; she has provided no evidence to support her valuation of the property.

First, this motion is not seeking to avoid LMC's lien as a preference. This motion is seeking to avoid the lien on the basis that it impairs the debtor's exemption in the property, under section 522(f)(1)(A).

Second, the court does not decide if debts should be paid based on whether they are vague or unclear. Just because a debt may be vague or unclear is not a basis for disallowing payment or ignoring the debt. The secured claim of Richard Sauer has been scheduled and the court has no evidence that it has no merit. Moreover, Fed. R. Bankr. P. 7001(4) requires an adversary proceeding for a determination of the validity, priority, or extent of a lien or other interest in property. In other words, in the event LMC is seeking to dispute the claim of Richard Sauer, it must do so via an adversary proceeding.

Third, the debtor's opinion of value in the schedules is evidence of value and it may be conclusive in the absence of contrary evidence. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). LMC has provided the court with no contrary evidence of value. The opposition contains only unsubstantiated allegations.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$595,000 as of the date of the petition. The unavoidable liens total in excess of 563,000. The debtor has an available exemption of \$50,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

65. [08-27043](#)-A-7 MARY BAZIL
DCR #6

HEARING - MOTION TO
AMEND EXEMPTIONS
11-14-08 [[50](#)]

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 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.

Because this case was previously closed then reopened, the debtor must obtain leave of court to amend her exemptions. See Fed. R. Bankr. R. 1009(a). The motion seeks leave to claim a \$50,000 homestead exemption in the debtor's residence. It appears that the debtor intended to claim this exemption at the beginning of the case but failed to do so. In order to claim it now, none of the debtor's other exemptions are changing. Further, there is no indication that claiming the exemption at this point has resulted in prejudice to anyone.

66. 08-35144-A-7 SAGADEWA/MADHU PILLAY HEARING - MOTION FOR
JMS #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE, VS. 11-6-08 [[11](#)]

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

The motion will be granted.

The movant, Chase Home Finance, seeks relief from the automatic stay with respect to real property in Sacramento, California. The property has a value of \$129,000 and is encumbered by claims totaling approximately \$408,000. The movant's deed is in first priority position and secures a claim of \$333,121.83.

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.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived.

That period, however, shall run concurrently with the 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. 06-24445-A-7 LESLEY KITZMILLER
MGS #1

HEARING - MOTION FOR
ADMINISTRATIVE CLAIM
11-10-08 [80]

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

The motion will be granted.

The estate received distributions from a trust as the successor of a beneficiary. Even though California permits the deduction of trust expenses prior to distributions to trust beneficiaries, the distributions to the estate were without such deduction for the legal expenses of the trust. This motion seeks to assess a pro rata share of those expenses, \$1,749.05, to the estate. The motion is granted pursuant to 11 U.S.C. § 507(a)(2).

68. 07-24945-A-7 JOSE/TAMMY MAGALLANES
SW #2
GMAC, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-26-08 [84]

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 is granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The subject property has a value of \$16,050 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$25,053.29. There is no equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the subject property for the benefit of creditors.

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

the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

69. [08-32746](#)-A-7 RONALD/JULIE EDDLEMON HEARING - MOTION FOR
KAT #5 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-18-08 [[51](#)]

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, seeks relief from the automatic stay with respect to real property in Roseville, California. The property has a value of \$400,000 and is encumbered by the movant's claim of \$595,523.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 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. [08-34246](#)-A-7 TERRY GARCIA HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-10-08 [[16](#)]

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

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, seeks relief from the automatic stay with respect to real property in Antelope, California. The property has a value of \$330,000 and is encumbered by the movant's claim of \$475,282.15.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 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. [08-32347](#)-A-7 NICOLE CRANDALL HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-4-08 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, seeks relief from the automatic stay with respect to real property in Lincoln, California. The

property has a value of \$413,000 and is encumbered by claims totaling approximately \$525,365.75. The movant's deed is in first priority position and secures a claim of \$442,865.75.

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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

72. [08-32947](#)-A-7 ANTHONY OWINGS HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, RSB, VS. 11-13-08 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, seeks relief from the automatic stay with respect to real property in Tracy, California. The property has a value of \$336,000 and is encumbered by claims totaling approximately \$425,000. The movant's deed is in first priority position and secures a claim of \$380,415.30.

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.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 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. 08-35047-A-7 DELILAH/VINCENSOR PEREZ HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
EMC MORTGAGE CORP., VS. 11-10-08 [12]

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

The motion will be granted.

The movant, EMC Mortgage, seeks relief from the automatic stay with respect to real property in Plumas Lake, California. The property has a value of \$239,000 and is encumbered by claims totaling approximately \$548,000. The movant's deed is in first priority position and secures a claim of \$440,144.56.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

74. 08-35449-A-7 KARIMI MBAE
KAT #1
WELLS FARGO BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-26-08 [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, Wells Fargo Bank, seeks relief from the automatic stay with respect to real property in San Diego, California. The property has a value of \$300,000 and is encumbered by claims totaling approximately \$330,742.82. The movant's deed is in first priority position and secures a claim of \$301,520.44.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

75. 08-34450-A-7 BRENDA BROWN
JHW #1
DCFS USA LLC, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-5-08 [11]

Tentative Ruling: The motion will be dismissed as moot.

The movant, DCFS USA LLC, seeks relief from the automatic stay with respect to a 2003 Mercedes Benz.

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

consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be dismissed as moot.

The movant, Wells Fargo Financial, seeks relief from the automatic stay with respect to a 2001 Nissan Frontier.

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). If the debtor states an intention to reaffirm or redeem, the debtor must perform the intention within 30 days of the date first set for the meeting of creditors. See 11 U.S.C. § 521(a)(2)(B).

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).

The petition here was filed on October 14, 2008 and a meeting of creditors was first convened on November 21, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than November 13, 2008. The debtor filed a statement of intention on the petition date that indicated nothing regarding a reaffirmation or redemption. Instead, it stated the debtor intended to "retain" the vehicle without redeeming or reaffirming. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. One was filed on November 25, more than 30 days after the meeting. As a result, the automatic stay automatically terminated on November 13, 2008, 30 days after the filing of the petition.

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 November 13, 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.

The movant shall bear its own fees and costs.

77. 08-33751-A-7 STEVEN/CATHY MOORE HEARING - MOTION FOR
RDM #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY BANK, VS. 12-1-08 [27]

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

The motion will be dismissed as moot.

The movant, National City Bank, seeks relief from the automatic stay with respect to a 2003 Sea Ray boat and a trailer.

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). If the debtor states an intention to reaffirm or redeem, the debtor must perform the intention within 30 days of the date first set for the meeting of creditors. See 11 U.S.C. § 521(a)(2)(B).

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).

The petition here was filed on September 25, 2008 and a meeting of creditors was first convened on November 5, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than October 25, 2008. The debtor filed a statement of intention on the petition date that indicated a intention to surrender the boat. However, by the 30th day after the initial meeting, the debtor had not performed the stated intention to surrender the boat. As a result, the automatic stay automatically terminated

on December 5, 2008, 30 days after the meeting.

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 December 5, 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.

The movant shall bear its own fees and costs.

78. [08-35651](#)-A-7 LEONARD SCROGGINS HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-17-08 [8]

Final Ruling: The order to show cause will be discharged.

An order to show cause was issued because the debtor failed to file a certificate for credit counseling as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). Nonetheless, after issuance of the order to show cause, the debtor filed the certificate. No prejudice has resulted from the delay.

79. [08-35651](#)-A-7 LEONARD SCROGGINS HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-25-08 [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, Mortgage Electronic Registration Systems, seeks relief from the automatic stay with respect to real property in Redding, California. The property has a value of \$299,000 and is encumbered by claims totaling approximately \$455,552.19. The movant's deed is in first priority position and secures a claim of \$336,602.19.

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

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

80. 08-34053-A-7 PETER/LYUBOV KALACHIK HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE BANK, VS. 11-10-08 [10]

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

The motion will be granted.

The movant, Countrywide, seeks relief from the automatic stay with respect to real property in Roseville, California. The property has a value of \$358,650 and is encumbered by claims totaling approximately \$539,986.72. The movant's deed is in first priority position and secures a claim of \$498,828.64.

The court concludes that there is no equity in the property 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 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

82. [08-35356](#)-A-7 SHANAN DAY HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, VS. 11-26-08 [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, IndyMac Federal Bank, seeks relief from the automatic stay with respect to real property in Woodland, California. The property has a value of \$350,000 and is encumbered by the movant's claim of \$376,882.60.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 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. [08-35856](#)-A-7 KARI ZARICK HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MTG., INC., VS. 11-13-08 [10]

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

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

The motion will be granted.

The movant, Wells Fargo Home Mortgage, seeks relief from the automatic stay with respect to real property in Plumas Lake, California. The property has a value of \$190,000 and is encumbered by the movant's claim of \$324,117.53.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 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. 08-28058-A-7 CAROLINE SMART HEARING - MOTION FOR
JRR #2 APPROVAL OF COMPROMISE AND
SETTLEMENT
11-12-08 [32]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee seeks approval of a settlement agreement resolving a dispute concerning an alleged \$1,400 preferential transfer made to Chase Bank by the

debtor. Chase maintains that the transfer, even though preferential, cannot be recovered because it extended additional credit to the debtor after the payments to it by the debtor. Nonetheless, it has offered to pay the estate \$960.75 to resolve the preference claim.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. Considering the modest amount at issue, the cost of litigation, and a potentially meritorious defense under 11 U.S.C. § 547(c)(4), the best interests of creditors require approval of a settlement.

85. 08-28058-A-7 CAROLINE SMART
JRR #3

HEARING - MOTION FOR
APPROVAL OF COMPROMISE AND
SETTLEMENT
11-12-08 [[29](#)]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee seeks approval of a settlement agreement resolving a dispute concerning an alleged \$875 preferential transfer made to Citibank by the debtor. Citibank maintains that the transfer, even though preferential, cannot be recovered because it extended additional credit to the debtor after the payments to it by the debtor. Nonetheless, it has offered to pay the estate \$700 to resolve the preference claim.

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

The court concludes that the Woodson factors balance in favor of approving the

compromise. Considering the modest amount at issue, the cost of litigation, and a potentially meritorious defense under 11 U.S.C. § 547(c)(4), the best interests of creditors require approval of a settlement.

86. [01-28359](#)-A-7 TIMOTHY/RENEE FEATHERSTON HEARING - MOTION FOR
AC #2 RELIEF FROM AUTOMATIC STAY
AMERICA'S SERVICING COMPANY, VS. 11-12-08 [184]

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

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

The movant, America's Servicing Company, seeks relief from the automatic stay as to real property in Fairfield, California.

Given the entry of the debtor's discharge on September 24, 2002, 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 \$135,000 and is encumbered by claims totaling approximately \$403,526.63. The movant's deed is in first priority position and secures a claim of \$353,412.89.

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.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

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

87. [08-31663](#)-A-7 RICHARD/CAMELLA HANLIN
PD #2
AURORA LOAN SERVICES LLC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-13-08 [[32](#)]

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

The motion will be granted.

The movant, Aurora Loan Services, seeks relief from the automatic stay with respect to real property in Lincoln, California. The property has a value of \$413,000 and is encumbered by claims totaling approximately \$\$1,605,000. The movant's deed is in first priority position and secures a claim of \$1,325,693.71.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

88. [08-33765](#)-A-7 RALPH/CORINNE JACKSON
PLG #1

CONT. HEARING - MOTION FOR
REDEMPTION
9-30-08 [[6](#)]

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

The motion will be dismissed without prejudice.

The debtor seeks to redeem a 2005 Nissan Maxima with approximately 49,000 miles in a fair condition. The private party Kelley Blue Book value of the vehicle

is \$13,040. The debtor listed First Metropolitan Credit Union as holding a secured claim in the approximate amount of \$24,816 in Schedule D.

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

The motion will be dismissed. First, the debtor did not notice the motion on the secured creditor, First Metropolitan Credit Union.

Second, the court has no evidence that the vehicle is intended for the personal, household or family use of the debtors. The declaration in support of the motion states nothing about how the vehicle is used.

Third, the vehicle must be valued at its replacement value. In the chapter 7 case of an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2). The value suggested by the debtors is the price for which a private party would buy or sell the car. This is not the replacement value as defined in section 506(a)(2).

Finally, the motion has been superceded by a later filed motion requesting the same relief.

89. [08-33765](#)-A-7 RALPH/CORINNE JACKSON CONT. HEARING - MOTION FOR
PLG #2 REDEMPTION
9-30-08 [\[11\]](#)

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

The motion will be dismissed without prejudice.

The debtor seeks to redeem a 2004 Nissan Titan with approximately 57,000 miles in a fair condition. The private party Kelley Blue Book value of the vehicle is \$12,560. The debtor listed Travis AFB FCU as holding a secured claim in the approximate amount of \$19,767 in Schedule D.

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

The motion will be dismissed. First, the debtor did not notice the motion on the secured creditor, Travis AFB FCU.

Second, the court has no evidence that the vehicle is intended for the personal, household or family use of the debtors. The declaration in support of the motion states nothing about how the vehicle is used.

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

506(a)(2). The value suggested by the debtors is the price for which a private party would buy or sell the car. This is not the replacement value as defined in section 506(a)(2).

Finally, the motion has been superceded by a later filed motion requesting the same relief.

90. [08-33765](#)-A-7 RALPH/CORINNE JACKSON HEARING - MOTION FOR
PLG #3 REDEMPTION
11-13-08 [26]

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

The motion will be granted.

The debtors seek to redeem a 2005 Nissan Maxima with approximately 49,000 miles in a fair condition. The value of the vehicle is \$13,040. First Metropolitan Credit Union holds a claim that is secured by the vehicle in the approximate amount of approximately \$24,816.

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

The evidence indicates that the vehicle is exempt, intended for the personal, household or family use of the debtors, the respondent's claim is dischargeable, and the replacement value of it is \$13,040. In a chapter 7 case of an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2). That value is \$13,040.

91. [08-33765](#)-A-7 RALPH/CORINNE JACKSON HEARING - MOTION FOR
PLG #4 REDEMPTION
11-13-08 [31]

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

The motion will be granted.

The debtor seeks to redeem a 2004 Nissan Titan with approximately 57,000 miles in a fair condition. The vehicle has a value of \$12,560. Travis AFB FCU holds a claim in the approximate amount of \$19,767 .

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

The evidence indicates that the vehicle is exempt, intended for the personal, household or family use of the debtors, the respondent's claim is dischargeable, and the replacement value of it is \$12,560. In a chapter 7 case of an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2). That value is \$12,560.

92. 08-35666-A-7 SURJIT SINGH AND HEARING - MOTION FOR
WGM #1 VARINDER GHUMAN RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 11-26-08 [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, JP Morgan Chase Bank, seeks relief from the automatic stay with respect to real property in Mountain House, California. The property has a value of \$350,000 and is encumbered by claims totaling approximately \$684,000. The movant's deed is in first priority position and secures a claim of \$624,926.99.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

93. [08-35268](#)-A-7 DOROTHY APARICIO HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-26-08 [13]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, seeks relief from the automatic stay with respect to real property in Stockton, California. The property has a value of \$158,000 and is encumbered by the movant's claim of \$414,060.69.

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.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

94. [08-35468](#)-A-7 MARTHA ZAZUETA
WGM #1
DEUTSCHE BANK NATIONAL TRUST CO., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-26-08 [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, Deutsche Bank, seeks relief from the automatic stay with respect to real property in Sacramento, California. The property has a value of \$189,200 and is encumbered by claims totaling approximately \$412,000. The movant's deed is in first priority position and secures a claim of \$340,633.81.

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.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d) (2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

95. [08-31169](#)-A-7 ROMEL/JENNY GOROSPE
KAT #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-24-08 [28]

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

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

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

The movant, Mortgage Electronic Registration Systems, seeks relief from the automatic stay as to real property in Benicia, California.

Given the entry of the debtor's discharge on November 24, 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 \$690,000 and is encumbered by claims totaling approximately \$811,435.41. The movant's deed is in first priority position and secures a claim of \$666,654.95. The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

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

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

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred.

If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

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

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

96. 08-34572-A-7 WARREN SIVERTSON HEARING - MOTION FOR
KAT #2 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, VS. 11-26-08 [23]

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

The motion will be granted.

The movant, IndyMac Federal Bank, seeks relief from the automatic stay with respect to real property in Antelope, California. The property has a value of \$208,500 and is encumbered by claims totaling approximately \$385,441.84. The movant's deed is in first priority position and secures a claim of \$342,054.84.

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

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived.

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

97. [08-32373](#)-A-7 JAMES/JENNIFER HICKS HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WASHINGTON MUTUAL BANK, VS. 11-17-08 [[18](#)]

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

The motion will be granted.

The movant, Washington Mutual Bank, seeks relief from the automatic stay with respect to real property in Roseville, California. The property has a value of \$366,539 and is encumbered by claims totaling approximately \$442,000. The movant's deed is in second priority position and secures a claim of \$50,996.12.

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

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d) (2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

98. [08-33974](#)-A-7 ADAM DAVILA HEARING - MOTION FOR
SKI #1 RELIEF FROM AUTOMATIC STAY
DAIMLERCHRYSLER FIN'L SVCS., ETC., VS. 11-14-08 [[15](#)]

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

The movant, DaimlerChrysler Financial, seeks relief from the automatic stay

with respect to a 2003 Dodge Neon.

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). If the debtor states an intention to reaffirm or redeem, the debtor must perform the intention within 30 days of the date first set for the meeting of creditors. See 11 U.S.C. § 521(a)(2)(B).

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).

The petition here was filed on September 30, 2008 and a meeting of creditors was first convened on November 6, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than October 30, 2008. The debtor filed a statement of intention on September 30 indicating an intent to "reaffirm" the debt secured by the vehicle. However, no reaffirmation agreement or motion to redeem was filed by the December 6 deadline. One was filed on December 9. As a result, the automatic stay automatically terminated on December 6, 2008, 30 days after the meeting.

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 December 6, 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.

The movant shall bear its own fees and costs.

99. [08-28376](#)-A-7 SUTTER FOAM & COATING, INC. HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
L.M. COMBS CONSTRUCTION, INC., ET AL., VS. 11-7-08 [40]

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

Counsel is reminded that Local Bankruptcy Rule 9014-1 requires that a docket control number be given to every motion placed on calendar for hearing. See Local Bankruptcy Rule 9014-1(c).

The motion to approve the stipulation for relief from the automatic stay will be granted.

The movant and the debtor, as well as others, are asserting mutual claims in a pending state court action arising out of a construction dispute. The debtor, as a corporation, will not receive a discharge in this bankruptcy case, and the trustee abandons, as part of the stipulation, any interest in the debtor's claim against the movant. Therefore, approving the stipulation will have no impact on the estate provided that any judgment against the debtor is not enforced against the estate other than by presenting a proof of claim in this case or by making a claim against any insurance the debtor may have. The court concludes that cause exists to grant this relief pursuant to 11 U.S.C. §§ 362(d)(1) and 554(a).

The parties shall bear their own fees and costs.

100. [08-36077](#)-A-7 TYONE/TAMIKA GLENN HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-13-08 [8]

Tentative Ruling: The case will be dismissed.

The debtor did not file a Statement of Social Security Number, either with the petition or within 15 days of its filing, as required by Fed. R. Bankr. P. 1007(f). The court takes the debtor's social security number from this statement and includes it on the notice of the commencement of the case that is served on all creditors. Creditors frequently need the social security number to identify the debtor. Thus, the quality of notice may be substantially reduced and perhaps nullified by the absence of the social security number. See Ellett v. Goldberg (In re Ellett), 317 B.R. 134 (Bankr. E.D. Cal. 2004), *affirmed* 328 B.R. 205 (E.D. Cal. 2005), *affirmed* 506 F.3d 774 (9th Cir. 2007). As a result, the failure to file the Statement of Social Security Number may be cause for dismissal. See 11 U.S.C. § 707(a)(1). While the debtor in this case belatedly filed the statement on November 21, this was not in time for the court to include the social security number on the notice of the commencement of the case which was served on November 15. Thus, the late filing caused prejudice to creditors.

101. [08-36077](#)-A-7 TYONE/TAMIKA GLENN

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-13-08 [[9](#)]

Tentative Ruling: The case will be dismissed.

The debtor failed to file a master address list with the petition as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. The deadline for filing the list has expired and the notice of the commencement of this bankruptcy case was served on November 15. Because no master address list has been filed, the notice was not served on all creditors. As a result, they were not notified that the case had been filed nor did they receive notice of the various deadlines for filing complaints, objecting to exemptions, and filing proofs of claims. To permit the case to remain pending would be unfair to all creditors. See 11 U.S.C. § 707(a)(1). Accordingly, the petition will be dismissed.

102. [08-36077](#)-A-7 TYONE/TAMIKA GLENN

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-21-08 [[14](#)]

Tentative Ruling: The case will be dismissed as to debtor Tyone Glenn.

An order to show cause was issued because debtor Tyone Glenn failed to file Exhibit D to the petition together with a certificate for credit counseling as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). The time to file these documents has expired. See Fed. R. Bankr. P. 1007(c). Thus, the debtor has not established eligibility for bankruptcy relief. See 11 U.S.C. § 109(h). This is cause for dismissal.

103. [05-38678](#)-A-7 GARNAS AND RABE
SHR #3 CONSTRUCTION, INC.
JOHN MOURIER CONSTRUCTION, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
10-17-08 [[171](#)]

Tentative Ruling: Although the movant has given 38 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, John Mourier Construction, Inc., seeks relief from the automatic stay to proceed with its state court cross-complaint for indemnity, negligence, breach of contract, declaratory relief, and breach of warranties against the debtor. Recovery will be limited to available insurance coverage, if any.

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). If the debtor states an intention to reaffirm or redeem, the debtor must perform the intention within 30 days of the date first set for the meeting of creditors. See 11 U.S.C. § 521(a)(2)(B).

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).

The petition here was filed on September 15, 2008 and a meeting of creditors was first convened on October 30, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than October 15, 2008. The debtor filed a statement of intention on the petition date that indicated a intention to surrender the vehicle. However, by the 30th day after the initial meeting, the debtor had not performed the stated intention to surrender the vehicle. As a result, the automatic stay automatically terminated on November 29, 2008, 30 days after the meeting.

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 November 29, 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.

The movant shall bear its own fees and costs.

106. [08-35283](#)-A-7 ROBERT/DOROTHY BRAYDEN
MKB #1
WELLS FARGO BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-21-08 [[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 is granted pursuant to 11 U.S.C. § 362(d) (2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The subject property has a value of \$45,000 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$66,432.70. There is no equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the subject property for the benefit of creditors.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 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 collateral is being used by the debtor without compensation and is depreciating in value.

107. [07-30685](#)-A-7 INTELLIGENT DIRECT MARKETING
[08-2456](#)
TODD VOWELL, ET AL., VS.
JEFFREY GARCIA

HEARING - MOTION TO
BE RELIEVED AS COUNSEL OF
RECORD FOR PLAINTIFFS
11-13-08 [[15](#)]

Tentative Ruling: The motion will be granted.

Counsel for the plaintiffs seeks to withdraw because the plaintiffs are not paying him.

The bankruptcy case was initiated as an involuntary petition which the court granted under chapter 7 on June 18, 2008. A trustee was thereafter appointed.

This adversary proceeding was originally filed in state court then removed to the bankruptcy court by one of the defendants on August 18. Neither the bankruptcy estate nor the debtor is identified as a party to the adversary proceeding.

Counsel has not been employed by the chapter 7 trustee.

Local District Rule 83-182(d), made applicable here by Local Bankruptcy Rule 1001-1(c), prohibits an attorney from withdrawing from a case and leaving the

client to represent himself, without leave of court, upon a noticed motion and notice to the client. This rule also requires the attorney to comply with the California Rules of Professional Conduct when withdrawing.

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." American Economy Ins. Co. v. Herrera, No. 06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting Irwin v. Mascott, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at *1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

Because counsel is not being paid, because there is no dispute on this point, because the case is in its early stages, because there are no motions pending, and because the plaintiffs will have an opportunity to obtain new counsel, the motion will be granted. Counsel shall provide the plaintiffs with all of their property including a copy of the litigation file. The order granting the motion shall specify the address at which each plaintiff may be served by mail.

108. 08-34886-A-7 EDUARD ZHELEZNY HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE, INC., VS. 11-13-08 [18]

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

The motion will be granted.

The movant, Wells Fargo Home Mortgage, seeks relief from the automatic stay with respect to real property in Rancho Cordova, California. The property has a value of \$168,251 and is encumbered by claims totaling approximately \$207,000. The movant's deed is in first priority position and secures a claim of \$184,771.35.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

109. 08-35486-A-7 HOWARD ARCURI
WGM #1
JP MORGAN CHASE BANK N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-20-08 [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, JP Morgan Chase Bank, seeks relief from the automatic stay with respect to real property in Lincoln, California. The property has a value of \$259,000 and is encumbered by claims totaling approximately \$401,825.68. The movant's deed is in first priority position and secures a claim of \$351,841.66.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

Final Ruling: This motion to dismiss the case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor 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 sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the United States Trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the debtor's default is entered and the matter will be resolved without oral argument.

The motion will be granted and the case will be dismissed.

The U.S. Trustee seeks dismissal, arguing that: (1) the debtors' debts are primarily consumer debts; (2) and the debtors have the ability to pay a significant portion of their unsecured debts. Therefore, because the debtors are able to pay a significant portion of their unsecured debts, the U.S. Trustee maintains that a finding of abuse is warranted pursuant to 11 U.S.C. § 707(b)(3)(B).

Factually, the motion is based on the debtors' surplus of monthly net income, a total of approximately \$1,691. To arrive at this amount, the U.S. Trustee has deducted \$6,323 in monthly secured debt service from the debtors' monthly expenses. This was done because the debtors are surrendering the collateral pledged on these obligations. This includes their home, a rental property, a car and a boat. The U.S. Trustee has added \$1,392 for rent to the debtors' monthly expenses. This represents the rent payment permitted by the IRS Collection Financial Standards. There is no evidence that this rental allowance is inadequate to provide reasonable substitute housing for the debtors.

11 U.S.C. § 707(b)(1) provides that, after notice and a hearing, on its own motion or on a motion by the U.S. Trustee, the court may dismiss a case filed by an individual debtor whose debts are primarily consumer debts if it concludes that the granting of chapter 7 relief would be an abuse of the chapter 7 provisions. Consumer debts are defined as "debt incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8).

A review of the schedules clearly indicates that the debtors' debts are consumer debts. The debtors have less than \$60,000 of nonpriority unsecured debt listed on Schedule F; they have no scheduled priority unsecured debt.

11 U.S.C. § 707(b)(3) provides that the court may determine the existence of abuse under section 707(b)(1) by considering (A) whether the debtor filed the petition in bad faith; or (B) the totality of the circumstances of the debtor's financial situation.

Considering that the debtors have a surplus of actual income over their monthly expenses of approximately \$1,691, and considering that their unsecured debt totals approximately \$56,000, in a chapter 13 case, the debtors would be able to repay 100% of that debt within 36 months. Their filing of a chapter 7 proceeding notwithstanding their ability to pay a substantial portion of their

consumer debt is an abuse of chapter 7. Therefore, absent a conversion of this case to chapter 13, the motion will be granted and the case will be dismissed.

111. [08-31988](#)-A-7 MARK/KRISTI BARROW
PD #1
GMAC MORTGAGE, LLC, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-14-08 [[15](#)]

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

The motion will be granted.

The movant, GMAC Mortgage, seeks relief from the automatic stay with respect to real property in Fairfield, California. The property has a value of \$300,000 and is encumbered by claims totaling approximately \$418,000. The movant's deed is in first priority position and secures a claim of \$275,824.95.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

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

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

If a motion for fees and costs is filed, it shall be set for hearing pursuant

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

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

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

112. [08-31389](#)-A-7 VIRGINIA GALAVIZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-17-08 [[29](#)]

Final Ruling: The order to show cause will be discharged.

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The debtor failed to pay a portion of an installment. However, the debtor paid that portion on November 18, 2008. No prejudice has resulted from the delay.

113. [08-35990](#)-A-7 AZIZ/BIBI REHMAN HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MTG., INC., VS. 11-20-08 [[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, Wells Fargo Home Mortgage, seeks relief from the automatic stay with respect to real property in Sacramento, California. The property has a value of \$144,500 and is encumbered by the movant's claim of \$224,621.80.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

114. [08-35990](#)-A-7 AZIZ/BIBI REHMAN
KAT #1
INDYMAC FEDERAL BANK FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-25-08 [[18](#)]

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

The motion will be granted.

The movant, IndyMac Federal Bank, seeks relief from the automatic stay with respect to real property in Sacramento, California. The property has a value of \$154,000 and is encumbered by the movant's claim of \$250,101.81.

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.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

115. [08-35591](#)-A-7 TARIK/CORRINA TOTAH HEARING - MOTION FOR
APN #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO FINANCIAL, VS. 11-13-08 [7]

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

The motion will be dismissed as moot.

The movant, Wells Fargo Financial, seeks relief from the automatic stay with respect to a 2003 Dodge Durango.

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). If the debtor states an intention to reaffirm or redeem, the debtor must perform the intention within 30 days of the date first set for the meeting of creditors. See 11 U.S.C. § 521(a)(2)(B).

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).

The petition here was filed on October 28, 2008 and a meeting of creditors was first convened on December 5, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than November 27, 2008. The debtor filed a statement of intention on the petition date that indicated nothing regarding a reaffirmation or redemption. Instead, it stated the debtor intended to "retain" the vehicle without redeeming or reaffirming. 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 November 27, 2008, 30 days after the filing of

the petition.

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 November 27, 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.

The movant shall bear its own fees and costs.

116. 08-33093-A-7 MONIQUE ALLEN
RCO #1
COUNTRYWIDE HOME LOANS, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-13-08 [[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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Countrywide, seeks relief from the automatic stay with respect to real property in Sacramento, California. The property has a value of \$317,000 and is encumbered by claims totaling approximately \$491,547.17. The movant's deed is in first priority position and secures a claim of \$400,651.65.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

117. [08-34094](#)-A-7 GENE/JUDY EWTON
KAT #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-24-08 [[13](#)]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, seeks relief from the automatic stay with respect to real property in Sacramento, California. The property has a value of \$374,425 and is encumbered by the movant's claim of \$440,446.28.

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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

118. [08-35394](#)-A-7 DAVID/BARBARA ENOCHSON HEARING - MOTION FOR
MET #1 RELIEF FROM AUTOMATIC STAY
BANK OF THE WEST, VS. 11-5-08 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The subject property has a value of \$30,890 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$40,643.95. There is no equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the subject property for the benefit of creditors.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 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 collateral is being used by the debtor without compensation and is depreciating in value.

119. [08-37094](#)-A-7 RICKY/SHARI YOUNGER HEARING - U.S. TRUSTEE'S MOTION
UST #1 FOR DETERMINATION OF WHETHER
APPOINTMENT OF A PATIENT CARE
OMBUDSMAN IS REQUIRED
11-26-08 [7]

Tentative Ruling: The motion will be granted.

The U.S. Trustee moves the court to determine whether the appointment of a patient care ombudsman under 11 U.S.C. § 333(a) is necessary.

11 U.S.C. § 333(a)(1) provides that:

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

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

The debtor operates an assisted care facility for two developmentally disabled persons. The debtor provides no medical care. The two persons residing in the facility are able to live independently. The debtor, then, does not provide surgical, drug treatment, psychiatric, or obstetric care. Hence, the debtor does not fit within the definition of a health care business, as contemplated by section 333(a)(1).

The court concludes that the debtor is not a "health care business" within the meaning of 11 U.S.C. § 333(a)(1). Accordingly, the appointment of a patient care ombudsman is unnecessary and is not required.

120. 08-31995-A-7 MARIA/ALBERTO OCHOA HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-26-08 [64]

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, seeks relief from the automatic stay with respect to real property in Oakland, California. The property has a value of \$150,000 and is encumbered by the movant's claim of \$448,399.49.

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.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. §

506(b) .

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

121. [08-33395](#)-A-7 DEREK CARDER HEARING - MOTION FOR
LEF #1 RELIEF FROM AUTOMATIC STAY
CHASE AUTO FINANCE CORP., VS. 11-19-08 [18]

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

The motion will be dismissed as moot.

The movant, Chase Auto Finance Corp., seeks relief from the automatic stay with respect to a 2006 Range Rover Sport.

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). If the debtor states an intention to reaffirm or redeem, the debtor must perform the intention within 30 days of the date first set for the meeting of creditors. See 11 U.S.C. § 521(a)(2)(B).

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).

The petition here was filed on September 19, 2008 and a meeting of creditors was first convened on October 24, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than October 19, 2008. The debtor filed a statement of intention on the petition date that indicated nothing regarding the subject vehicle or the debt secured by it. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on October 19, 2008, 30 days after the filing of the petition.

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 October 19, 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.

The movant shall bear its own fees and costs.

122. [08-29697](#)-A-7 OLGA/MAREK KOWALSKI HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
AMERICA'S WHOLESALE LENDER, VS. 11-6-08 [30]

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

The motion will be granted.

The movant, America's Wholesale Lender, seeks relief from the automatic stay with respect to real property in Citrus Heights, California. The property has a value of \$341,000 and is encumbered by claims totaling approximately \$537,345.47. The movant's deed is in first priority position and secures a claim of \$418,713.26.

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.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

123. [08-31297](#)-A-7 RYAN/BRIDGETTE BURCH HEARING - MOTION FOR
TJS #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 11-18-08 [15]

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

The motion will be dismissed because it is moot.

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay with respect to a 2005 Subaru Outback.

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). If the debtor states an intention to reaffirm or redeem, the debtor must perform the intention within 30 days of the date first set for the meeting of creditors. See 11 U.S.C. § 521(a)(2)(B).

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).

The petition here was filed on August 13, 2008 and a meeting of creditors was first convened on September 23, 2008. Therefore, a statement of intention that

refers to the movant's vehicle and debt was due no later than September 12, 2008. The debtor filed a statement of intention on August 13 indicating an intent to "reaffirm" the debt secured by the vehicle. However, no reaffirmation agreement or motion to redeem has been filed. As a result, the automatic stay automatically terminated on October 23, 2008, 30 days after the meeting.

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 October 23, 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.

The movant shall bear its own fees and costs.

124. [08-31297](#)-A-7 RYAN/BRIDGETTE BURCH HEARING - MOTION TO
[08-2536](#) REB #1 DISMISS FOR FAILURE TO STATE A
BRUCE MCCOY, ET AL., VS. CLAIM UPON WHICH RELIEF CAN BE
RYAN BURCH, ET AL. GRANTED
10-29-08 [8]

Tentative Ruling: The motion will be granted in part.

The defendants, Ryan and Bridgette Burch, the debtors in the underlying bankruptcy case, move to dismiss the complaint of the plaintiffs, Bruce and Patti McCoy, because it allegedly fails to state a claim upon which relief can be granted. Alternatively, they request a more definite statement because the complaint's allegations are so vague that they are unable frame a responsive pleading. See Fed. R. Civ. P. 12(b)(6) and (c), as made applicable by Fed. R. Bankr. P. 7012(b).

"In resolving a Rule 12(b)(6) motion, the court must (1) construe the complaint in the light most favorable to the plaintiff; (2) accept all well pleaded factual allegations as true; and (3) determine whether plaintiff can prove any set of facts to support a claim that would merit relief." Schwarzer, Tashmina & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial, § 9.187, p. 9-46, 9-47 (The Rutter Group 2002).

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

11 U.S.C. § 523(a)(2) provides that an individual is not discharged "from any debt for money . . ., to the extent obtained by - (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;" or "(B) use of a statement in writing- (I) that is materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on which the creditor to whom the debtor is liable for such money . . . reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive."

Section 523(a)(2)(A) requires a showing that: (1) the defendant made representations; (2) the defendant knew them to be false, when she made them; (3) she made the representations with the intent and purpose to deceive the plaintiff; (4) the plaintiff relied on the representations; and (5) as a result, the plaintiff sustained damages. Younie v. Gonya (In re Younie), 211 B.R. 367, 373 (B.A.P. 9th Cir. 1997). These elements are virtually identical to the elements of common law or actual fraud. In re Younie, 211 B.R. at 374; Advanta Nat'l Bank v. Kong (In re Kong), 239 B.R. 815, 820 (B.A.P. 9th Cir. 1999).

The complaint proper is two pages in length. It essentially states that an arbitrator determined that the defendants had committed fraud. However, the two-page complaint does not identify the fraudulent statements made, nor does it detail with any specificity the damages suffered by the plaintiffs when they relied on those statements. The award of the arbitrator is appended to the complaint along with other exhibits. That document resolves the inadequacies of the two-page complaint regarding the damages suffered by the plaintiffs but it does not adequately lay out the fraudulent statements made by the defendants. What "deceptive and misleading explanation" did the defendants make to the plaintiffs? When was this explanation given? Did the plaintiffs justifiably rely on this explanation? What did they do after hearing the explanation? Did both defendants give the explanation? Did the defendants know the explanation was false? Did the defendants intend to deceive the plaintiffs?

Therefore, the motion will be granted in part. Pursuant to Rule 12(c), the plaintiffs are to file an amended complaint within 14 days that provides a short, plain statements that identifies the particular statements made by each defendant, as well as the other elements of a claim under 11 U.S.C. § 523(a)(2).

125. [08-31297](#)-A-7 RYAN/BRIDGETTE BURCH HEARING - MOTION TO
[08-2536](#) BLB #1 DISMISS FOR FAILURE TO STATE A
BRUCE MCCOY, ET AL., VS. CLAIM UPON WHICH RELIEF CAN BE
RYAN BURCH, ET AL. GRANTED
10-29-08 [[12](#)]

Tentative Ruling: The motion will be granted in part.

The defendants, Ryan and Bridgette Burch, the debtors in the underlying

bankruptcy case, move to dismiss the complaint of the plaintiffs, Bruce and Patti McCoy, because it allegedly fails to state a claim upon which relief can be granted. Alternatively, they request a more definite statement because the complaint's allegations are so vague that they are unable frame a responsive pleading. See Fed. R. Civ. P. 12(b)(6) and (c), as made applicable by Fed. R. Bankr. P. 7012(b).

"In resolving a Rule 12(b)(6) motion, the court must (1) construe the complaint in the light most favorable to the plaintiff; (2) accept all well pleaded factual allegations as true; and (3) determine whether plaintiff can prove any set of facts to support a claim that would merit relief." Schwarzer, Tashmina & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial, § 9.187, p. 9-46, 9-47 (The Rutter Group 2002).

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

11 U.S.C. § 523(a)(2) provides that an individual is not discharged "from any debt for money . . ., to the extent obtained by - (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;" or "(B) use of a statement in writing- (I) that is materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on which the creditor to whom the debtor is liable for such money . . . reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive."

Section 523(a)(2)(A) requires a showing that: (1) the defendant made representations; (2) the defendant knew them to be false, when she made them; (3) she made the representations with the intent and purpose to deceive the plaintiff; (4) the plaintiff relied on the representations; and (5) as a result, the plaintiff sustained damages. Younie v. Gonya (In re Younie), 211 B.R. 367, 373 (B.A.P. 9th Cir. 1997). These elements are virtually identical to the elements of common law or actual fraud. In re Younie, 211 B.R. at 374; Advanta Nat'l Bank v. Kong (In re Kong), 239 B.R. 815, 820 (B.A.P. 9th Cir. 1999).

The complaint proper is two pages in length. It essentially states that an arbitrator determined that the defendants had committed fraud. However, the two-page complaint does not identify the fraudulent statements made, nor does it detail with any specificity the damages suffered by the plaintiffs when they relied on those statements. The award of the arbitrator is appended to the complaint along with other exhibits. That document resolves the inadequacies of the two-page complaint regarding the damages suffered by the plaintiffs but it does not adequately lay out the fraudulent statements made by the defendants. What "deceptive and misleading explanation" did the defendants make to the plaintiffs? When was this explanation given? Did the plaintiffs justifiably rely on this explanation? What did they do after hearing the explanation? Did both defendants give the explanation? Did the defendants know the explanation was false? Did the defendants intend to deceive the plaintiffs?

Therefore, the motion will be granted in part. Pursuant to Rule 12(c), the

plaintiffs are to file an amended complaint within 14 days that provides a short, plain statements that identifies the particular statements made by each defendant, as well as the other elements of a claim under 11 U.S.C. § 523(a) (2).

126. [08-34998](#)-A-7 JULIAN/ROSELLA NISPEROS HEARING - MOTION FOR
HRH #1 RELIEF FROM AUTOMATIC STAY
FIRST FEDERAL BANK OF CALIF., VS. 11-19-08 [[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, First Federal Bank, seeks relief from the automatic stay with respect to real property in Stockton, California. The property has a value of \$259,000 and is encumbered by the movant's claim of \$405,594.15.

The court concludes that there is no equity in the property 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 the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

127. [08-29499](#)-A-7 RHONDA MADSEN HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-17-08 [[18](#)]

Final Ruling: The order to show cause will be discharged.

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The debtor failed to pay a portion of an installment. However, the debtor paid that portion on November 18, 2008. No prejudice has resulted from the delay.

128. [08-33189](#)-A-7 SUPAT/KANOKPORN CHANONTREE HEARING - MOTION FOR
LAZ #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 12-2-08 [[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, Mortgage Electronic Registration Systems, seeks relief from the automatic stay with respect to real property in Citrus Heights, California. The property has a value of \$150,000 and is encumbered by the movant's claim of \$181,800.

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

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the 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 enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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