

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

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

1. 08-37102-A-7 JANELLE JENNINGS-CORTEZ HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER SVCS., INC., VS. 12-10-08 [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, Wachovia Dealer Services, Inc., seeks relief from the automatic stay with respect to a 2003 Lexus ES 300. The vehicle has a value of \$9,600 and its secured claim is approximately \$23,585.

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

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

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

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

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

2. 08-33803-A-7 PHUOC NGUYEN HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-25-08 [22]

Final Ruling: This order to show cause will be discharged as moot because the case was previously dismissed on December 15, 2008.

3. 08-35404-A-7 DEBRA BEAR HEARING - MOTION FOR
MBL #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK FSB, VS. 12-2-08 [14]

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

The motion will be granted.

The movant, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Manteca, California. The property has a value of \$248,000 and is encumbered by claims totaling approximately \$389,773. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 18, 2008.

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

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

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

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

4. 08-36104-A-7 WILLIAM/TERRI BORST HEARING - MOTION FOR
MBL #1 RELIEF FROM AUTOMATIC STAY
AMERICAN HOME MTG. SERVICING, INC., VS. 12-3-08 [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 Servicing, Inc., seeks relief from the automatic stay as to a real property in Manteca, California. The property has a value of \$251,000 and is encumbered by claims totaling approximately \$415,499. The movant's deed is in first priority position and secures a claim of approximately \$392,553.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 10, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

5. 08-32905-A-7 PAULA MURPHY HEARING - MOTION FOR
MBB #2 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-26-08 [25]

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

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

The motion will be granted.

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

The property has a value of \$100,000 and is encumbered by claims totaling approximately \$260,547. The movant's deed is in first priority position and secures a claim of approximately \$203,049.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 22, 2008.

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

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

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

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

6. 08-20206-A-12L DAVID/KELLY NUSS, VS. HEARING - MOTION FOR
KAT #2 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 12-5-08 [395]

Tentative Ruling: The motion will be denied.

The movant, JPMorgan Chase Bank, successor in interest to Washington Mutual, seeks relief from the automatic stay as to a real property in Lodi, California. The property has a value of \$575,000 according to the debtors' confirmed chapter 12 plan and is encumbered by claims totaling approximately \$378,203. The movant's deed is in first priority position and secures a claim of approximately \$299,209.

The court entered an order confirming the debtors' plan on November 18, 2008. The plan provides for payments to the movant via the chapter 12 trustee. The movant's claim "shall be paid from future earnings or future income turned over to the Chapter 12 Trustee by the Debtors." See Docket No. 283, Exhibit 4 to

First Amended Plan, at p. 25, ln 9.5-10.

The movant complains that the debtors are in breach of the plan because it required all monetary defaults to be cured and the loan reinstated by October 31, 2008, "at which time Debtors will resume making their usual monthly payment." See Docket No. 283, Exhibit 1 to First Amended Plan, at p. 14, ln 24.5-25.5.

However, the debtors could not have cured anything to the movant under the plan by October 31 because the plan was not confirmed until November 18. Moreover, the motion alleges that the debtors have not made two post-petition payments to the movant. It is the chapter 12 trustee who is responsible under the plan for making payments to the movant. The motion includes no evidence that the trustee has failed to make payments pursuant to the plan. As a result, the court has no evidence that the debtors are in breach of their confirmed chapter 12 plan.

Finally, the court notes that even though the motion was filed on December 5, the declaration in support of the motion was executed on November 24, only six days after entry of the plan confirmation order. This period of time was not sufficient for anyone to make payments to the movant after confirmation. This motion is premature, or, if there is a default, it is not material

The motion will be denied and the movant shall bear its own fees and costs.

7. 08-20206-A-12L DAVID/KELLY NUSS HEARING - APPLICATION FOR
WW #32 PAYMENT OF FINAL FEES AND/OR
EXPENSES (\$16,654.50 FEES; \$715.80
EXPENSES)
12-1-08 [367]

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 debtors, the chapter 12 trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The application will be granted.

Walter Wilhelm Law Group, attorney for the debtors, has filed its fifth and final application for approval of compensation. The first interim application was granted under the applicant's previous name, Walter Law Group. The order approving the applicant's employment was entered on January 31, 2008. With this application, the applicant seeks approval and payment of \$16,654.50 in fees and \$715.80 in expenses, for a total of \$17,370.30. The requested compensation is for the period from October 11, 2008 through November 7, 2008. The applicant charged hourly rates of between \$85 and \$380.

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) preparing compensation applications; (2) preparing supporting documentation to first amended plan; (3) negotiating objections to plan confirmation; (4) preparing for plan confirmation hearing; and (5) preparing pleadings for and obtaining court approval of compromise with Greg Smith.

The court concludes that the compensation is for actual, necessary, and beneficial services rendered to the debtor and the estate. The compensation will be approved.

8. 08-20206-A-12L DAVID/KELLY NUSS HEARING - APPLICATION FOR
WW #34 PAYMENT OF FINAL FEES AND/OR
EXPENSES (\$5,445.00)
12-1-08 [374]

Tentative Ruling: The application will be denied.

Mason, Robbins, Browning & Godwin, special counsel for the debtors, has filed its first and final application for approval of compensation. The order approving the applicant's employment was entered on March 6, 2008. With this application, the applicant seeks approval and payment of \$5,445 in fees. The requested compensation is for the period from February 21, 2008 through November 7, 2008. The applicant charged an hourly rate of \$225.

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."

However, the applicant has not submitted a narrative describing its services to the estate. The application contains only an itemized billing exhibit. This is not acceptable as a substitute to a description of the applicant's services. The application will be denied.

9. 08-20206-A-12L DAVID/KELLY NUSS HEARING - APPLICATION FOR
WW #35 PAYMENT OF FINAL FEES AND/OR
EXPENSES (\$10,582.50)
12-1-08 [387]

Tentative Ruling: The application will be denied.

Sather & Company, accountant for the debtors, has filed its first and final application for approval of compensation. The order approving the applicant's employment was entered on February 15, 2008. With this application, the applicant seeks approval and payment of \$10,582.50 in fees. The requested compensation is for the period from February 2, 2008 through November 7, 2008. The applicant charged hourly rates of between \$60 and \$175.

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."

However, the applicant has not submitted a narrative describing its services to the estate. The application contains only an itemized billing exhibit. This is not acceptable as a substitute to a description of the applicant's services. The application will be denied.

10. 08-36407-A-7 LYDIA GONZALEZ

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-2-08 [10]

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

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

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

11. 08-34308-A-7 MOHAMMAD SHAHIN
WGM #1
WASHINGTON MUTUAL BANK, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-2-08 [38]

Tentative Ruling: The motion will be granted.

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

The debtor has filed a response, agreeing only to a surrender of the property but no further relief.

The property has a value of \$200,000 and is encumbered by claims totaling approximately \$488,914. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 14, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

12. 08-30609-A-7 RANDALL/SHARLENE KNIGHT
MBB #3
COUNTRYWIDE HOME LOANS, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-26-08 [31]

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

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

The movant, Countrywide Home Loans, Inc., seeks relief from the automatic stay as to a real property in Redding, California.

Given the entry of the debtor's discharge on November 2, 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 movant has produced evidence that the property has a value of \$145,000 and is encumbered by claims totaling approximately \$159,285. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

13. 07-30510-A-7 JOSEPH/MARIE FLORENDO HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-21-08 [91]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for First Franklin, seeks relief from the automatic stay as to a real property in Lathrop, California. The property has a value of \$390,000 and is encumbered by claims totaling approximately \$519,292. The movant's deed is in first priority position and secures a claim of approximately \$422,041.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 18, 2008.

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

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

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

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

14. 08-34710-A-7 DENNIS WILLS HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
WASHINGTON MUTUAL BANK, VS. 12-12-08 [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 as to a real property in Auburn, California. The property has a value of \$232,000 and is encumbered by claims totaling approximately \$362,709. The movant's deed is in first priority position and secures a claim of approximately \$292,209.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 19, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

15. 08-34613-A-7 ISMAEL/ALICIA PEREZ HEARING - MOTION TO
VACATE DISMISSAL
12-9-08 [31]

Tentative Ruling: The motion will be denied.

The debtors move the court to vacate the dismissal of the case. They were unable to file their petition documents "[d]ue to unforeseen circumstances (immediate family member murdered)."

However, the court does not have the authority to vacate the debtors' dismissal because the court did not dismiss the case. As indicated by the two rulings of December 1, 2008, Docket Nos. 20 and 22, the case was automatically dismissed, effective November 24, 2008, pursuant to 11 U.S.C. § 521(i)(1). The court's rulings merely confirmed the dismissal. In other words, the case was dismissed by a statute and not an order of this court. As a result, the court does not have the authority to undo the dismissal.

The motion will be denied.

16. 08-35513-A-7 REYNA VALDEZ

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-3-08 [12]

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

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The first installment fee in the amount of \$75 due on November 26, 2008 was not paid.

However, the debtor paid the installment fee on December 9, 2008. No prejudice has resulted from the delay.

17. 08-34416-A-7 MARIA MARTINEZ
MBB #1
COUNTRYWIDE BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-25-08 [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, Countrywide Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$300,000 and is encumbered by claims totaling approximately \$415,541. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

18. 08-26918-A-7 JUSTODIO GARIBAY HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-25-08 [68]

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 20, 2008. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

19. 08-34018-A-7 VERONICA COBIAN HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-5-08 [15]

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 second installment fee in the amount of \$75 due on December 1, 2008 was not paid.

However, the debtor paid the installment fee on December 10, 2008. No prejudice has resulted from the delay.

20. 08-35424-A-7 DENNIS LAPHAM HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
DAIMLERCHRYSLER FIN'L, ETC., VS. 11-19-08 [12]

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

The motion will be granted.

The movant, Daimlerchrysler Financial Services Americas, seeks relief from the automatic stay with respect to a 2006 Chrysler Town & Country. The vehicle has a value of \$15,000 and its secured claim is approximately \$29,850.

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

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

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

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

21. 06-25625-A-7 MICHAEL/TERRY O'NEAL HEARING - MOTION TO
ADS #1 AVOID LIEN
VS. CELLCOM INTERNATIONAL, INC. 12-1-08 [32]

Final Ruling: The motion will be dismissed without prejudice because the notice of hearing has contradictory language. In paragraph four of the notice, the movants state that "opposition, if any, shall be presented at the hearing on said motion. Written opposition is required since motion was filed more than 28 calendar days [sic]."

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

22. 06-25625-A-7 MICHAEL/TERRY O'NEAL HEARING - MOTION TO
ADS #2 AVOID LIEN
VS. THE BRICKYARD, LLC 12-1-08 [37]

Final Ruling: The motion will be dismissed without prejudice because the notice of hearing has contradictory language. In paragraph four of the notice, the movants state that "opposition, if any, shall be presented at the hearing on said motion. Written opposition is required since motion was filed more than 28 calendar days [sic]."

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

Finally, the proof of service for the motion does not show that the debtors served the respondent, The Brickyard, LLC with the motion. Instead, the debtors served the respondent's attorney, Craig & Sackheim. But, unless the attorney agreed to accept service, service was improper. See In re Villar, 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). California secretary of state records indicate that the addresses for the respondent and the respondent's agent for service of process are in Los Angeles, California.

23. 08-34226-A-7 DANIEL WOLTERS HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 12-9-08 [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.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for American Home Mortgage Servicing, Inc., seeks relief from the automatic stay as to a real property in Yuba City, California. The property has a value of \$171,900 and is encumbered by claims totaling approximately \$505,484. The movant's deed is in third priority position and secures a claim of approximately \$37,001.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 8, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

24. 08-37226-A-7 DANIEL/CELIA CONNELLY HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-3-08 [7]

Tentative Ruling: The case will be dismissed.

This order to show cause was issued because the debtors failed to file a master address list with their petition, as required by Fed. R. Bankr. P. 1007(a) (1) and Local Bankruptcy Rule 1007-1. Although the debtors filed a master address list on December 5, 2008, the notice of the commencement of the case was

already served on the same date. Consequently, the creditors on the late-filed master address list were not served with the notice. This has prejudiced those creditors and is cause for dismissal. See 11 U.S.C. § 707(a)(1).

Further, a review of the petition documents filed on the petition date indicates that the debtors filed a complete list of their creditors but submitted it as the last two pages of their petition documents. And, the debtors did not include the required Verification of Master Address List cover sheet. As a result, the court clerk did not see the master address list and did not docket it as a separate entry on the docket. Therefore, the debtors bear the responsibility for the clerk's failure to notice the notice of the commencement of the case to the creditors on the list. Accordingly, the petition will be dismissed.

25. 07-28528-A-7 JOSEPH/ERIN MURPHY HEARING - MOTION FOR
BLL #3 ORDER APPROVING CONTINGENCY FEE
JOHN REGER, VS. AND AUTHORIZING PAYMENT
GLENNE MURPHY, ET AL. (\$7,666.66 FEES; \$233.27 EXP.)
12-9-08 [43]

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

The motion will be granted.

Byron Lynch, attorney for the trustee, has filed its first and final application for approval of compensation. The requested compensation, which is based on a one-third contingency fee agreement, consists of \$7,666.66 in fees and \$233.27 in expenses, for a total of \$7,899.93. The court approved the applicant's employment as the trustee's attorney on February 28, 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) prosecuting a fraudulent conveyance complaint against the co-beneficiaries of Debtor Joseph Murphy, under a living trust; (2) negotiating settlement of the litigation; and (3) obtaining court approval of the settlement. The settlement has generated \$23,000 for the estate.

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

26. 07-28528-A-7 JOSEPH/ERIN MURPHY
08-2378 BLL #2
JOHN REGER, VS.
GLENNE MURPHY, ET AL.

HEARING - MOTION FOR
ORDER AUTHORIZING TRUSTEE TO
ENTER INTO SETTLEMENT AGREEMENT
12-9-08 [20]

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

The motion will be granted.

The trustee seeks approval of a settlement agreement between the estate, on one hand, and Glenne Murphy, Bill Woodley and Deacon Murphy, on the other hand, settling the trustee's fraudulent conveyance litigation against them. Pre-petition, Debtor Joseph Murphy was entitled to a 10% distribution from the trust estate of the Georgia Woodley Living Trust. Approximately five weeks before filing for bankruptcy, Debtor Joseph Murphy and the other beneficiaries under the trust entered into a trust distribution agreement, altering Mr. Murphy's 10% present interest into a 10% future interest. This precipitated the trustee's post-petition fraudulent conveyance litigation.

Under the terms of the compromise, the defendants will pay \$23,000 to the estate in full satisfaction of the trustee's claim(s) against them. The only asset with "significant" value in the trust is a real property located in Los Molinos, California. A real estate agent for the trustee has valued the property at \$355,000, whereas the defendants in the litigation have valued it at \$210,000.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the risks, delay, and costs of further litigation, given the difficult and continually declining real estate market, and given the conflicting valuations of the real property, the settlement is equitable and fair.

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

27. 08-36428-A-7 DAVID ROBSON HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-5-08 [9]

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

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

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

28. 07-28629-A-7 CINDY CARRASCO HEARING - TRUSTEE'S MOTION FOR
RJH #2 ORDER APPROVING SALE
12-5-08 [38]

Tentative Ruling: The motion will be granted in part.

The chapter 7 trustee seeks authority to sell, free and clear of liens, a 2001 Ford Mustang at a public auction over the Internet, utilizing West Auctions, LLC. The sale will take place on or about January 8, 2009. The trustee does not know of any encumbrances against the vehicle.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to section 363(b), as it is in the best interests of the creditors and the estate.

But, given that the vehicle has no known encumbrances, the court will not approve the sale free and clear of liens. Moreover, the court may approve a sale free and clear of liens only held by parties that have been noticed with the motion.

29. 08-31829-A-7 TY MENGES HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, VS. 11-17-08 [24]

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

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

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

Given the entry of the debtor's discharge on December 5, 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 \$253,005 and is encumbered by claims totaling approximately \$402,700. The movant's deed is in second priority position and secures a claim of approximately \$66,800.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 7, 2008.

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

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

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

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

30. 08-34629-A-7 HAZEL STILWELL HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 11-21-08 [13]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Rocklin, California. The property has a value of \$230,000 and is encumbered by claims totaling approximately \$338,887. The movant's deed is the

only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 13, 2008.

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

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

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

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

31. 08-29930-A-7 REBEKAH HOEKSTRA HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE BANK, FSB, VS. 11-25-08 [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, Countrywide Bank, seeks relief from the automatic stay as to a real property in Redding, California.

Given the entry of the debtor's discharge on December 5, 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 \$192,000 and is encumbered by claims totaling approximately \$229,140. The movant's deed is in first priority position and secures a claim of approximately \$202,943.

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

administer it for the benefit of creditors.

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

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

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

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

32. 08-34630-A-7 ANTHONY/BARBARA POLISSO HEARING - MOTION FOR
MET #1 RELIEF FROM AUTOMATIC STAY
BANK OF THE WEST, VS. 11-26-08 [23]

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

The motion will be granted.

The movant, Bank of the West, seeks relief from the automatic stay with respect to a 2004 Four Winds Boat, motor and a trailer. The property has a value of \$14,000 in Schedule B and its secured claim is approximately \$24,099.

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

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

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

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

33. 08-36030-A-7 SOCORRO LOPEZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-24-08 [10]

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

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

However, the debtor filed all missing documents on December 4, 2008. No prejudice has resulted from the delay.

34. 08-31331-A-7 PETE SCARBOROUGH HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, VS. 11-18-08 [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.

The motion will be granted.

The movant, GMAC Mortgage, seeks relief from the automatic stay as to a real property in Manteca, California. The property has a value of \$200,000 and is encumbered by claims totaling approximately \$301,625. The movant's deed is in first priority position and secures a claim of approximately \$241,034.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 14, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

35. 08-34331-A-7 LUZ CUTOLO HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-3-08 [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 December 1, 2008. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

36. 08-38131-A-7 DALE WAGGONER HEARING - MOTION FOR
DSW #1 RELIEF FROM AUTOMATIC STAY
STEPHEN GARCIA, VS. 12-15-08 [10]

Tentative Ruling: The motion will be granted.

The movant, Stephen Garcia, seeks relief from the automatic stay as to a real property in Pollock Pines, California. After serving the debtor with a three-day notice to pay or quit, on November 12, the movant commenced an unlawful detainer proceeding against the debtor. The debtor filed the instant petition on December 9.

This is a liquidation proceeding and the debtor has no interest in the property as the movant is the legal owner of it. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with its unlawful detainer action against the debtor in state court. The parties are to return to state court in order to determine who is entitled to possession of the property. If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court.

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

37. 08-32232-A-7 ELENA MARTIN HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-24-08 [16]

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

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Golden, Colorado. The property has a value of \$750,000 and is encumbered by claims totaling approximately \$874,609. The movant's deed is in first priority position and secures a claim of approximately \$795,020.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 10, 2008.

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

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

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

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

38. 08-32234-A-7 OSWALD/DONNA WILLIAMS HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-4-08 [20]

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 third installment fee in the amount of \$75 due on December 1, 2008 was not paid.

However, the debtors paid the entire filing fee on December 16, 2008. No prejudice has resulted from the delay.

39. 08-36234-A-7 LYCHHAY ROATH HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-10-08 [12]

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

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The first installment fee in the amount of \$74 due on December 8, 2008 was not paid.

However, the debtor paid the entire filing fee on December 22, 2008. No prejudice has resulted from the delay.

40. 08-33939-A-7 CLEOFE REYES HEARING - MOTION FOR
PD #2 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE, LLC, VS. 11-21-08 [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, Chase Home Finance, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$456,500 and is encumbered by claims totaling approximately \$653,217. The movant's deed is in second priority position and secures a claim of approximately \$153,358.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 5, 2008.

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

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

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

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

41. 08-35039-A-7 STEVEN WISEMAN HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A., VS. 12-12-08 [14]

Tentative Ruling: Because less than 28 days' notice of the hearing was given

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

The motion will be granted.

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$330,000 and is encumbered by claims totaling approximately \$447,588. The movant's deed is in first priority position and secures a claim of approximately \$353,279.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 3, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

42. 07-25740-A-7 TODD RING
GJH #4

HEARING - FIRST AND FINAL FEE
APPLICATION OF HUGHES & PRITCHARD,
LLP, AS COUNSEL FOR TRUSTEE
(\$15,691.00 FEES; \$120.32 EXP.)
12-1-08 [96]

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

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

The application will be granted.

Hughes & Pritchard, attorney for the trustee, has filed its first and final application for approval of compensation. The requested compensation consists of \$15,691 in fees and \$120.32 in expenses, for a total of \$15,811.32. This application covers the period from November 8, 2007 through the hearing date. The court approved the applicant's employment as the trustee's attorney on November 19, 2007. In performing its services, the applicant charged hourly rates of \$280 and \$110.

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) assisting the trustee in the sale of a jointly owned real property; (2) filing and prosecuting an adversary proceeding to obtain approval of the sale; (3) obtaining a default judgment against the co-owner; (4) opposing a relief from stay motion by the junior lienholder on the property; and (5) preparing for litigation to avoid a post-petition deed of trust against the property, which was eventually withdrawn by the deed holder.

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

43. 08-35642-A-7 KATHRYNE GILES HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MORTGAGE CO., VS. 11-21-08 [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 Co., seeks relief from the automatic stay as to a real property in St. Augustine, Florida. The property has a value of \$179,322.92 and is encumbered by claims totaling at least approximately \$190,295. The movant's claim is one of two claims secured by the property. The other claim holder is Deutsche Bank, whose claim is listed in Schedule D as unknown.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 5, 2008.

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

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

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

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

44. 08-37643-A-7 ROBERT OWENS HEARING - APPLICATION FOR
WAIVER OF THE CHAPTER 7 FILING FEE
12-1-08 [5]

Tentative Ruling: The application will be denied.

The debtor moves for a waiver of the chapter 7 filing fee on the grounds that he has a monthly gross income of \$2,383.33 and monthly expenses of \$2,061.57. To be eligible for a fee waiver, his household income must be less than 150% of the poverty guidelines last published by the U.S. Department of Health and Human Services. See 28 U.S.C. § 1930(f)(1).

However, while the debtor's application contends that he is a three-person household, in Schedule I the debtor discloses his marital status as single with a one-year old daughter. The instructions on the application at line 1 expressly state that the debtor may include only his spouse and dependents and may not include his spouse if they are separated and are not filing jointly. Hence, because the debtor lists only one dependent and does not list a spouse in Schedule I, he is part of a two-person household.

The debtor's annual gross income is approximately \$28,599 (\$2,383.33 times 12). The 2008 poverty guidelines annual income for a household of two people is \$14,000. 150% of that amount is \$21,000. The court concludes then that the debtor is not eligible to seek a waiver of the filing fee.

Moreover, even if the debtor were a three-person household, as he states in the application, the 2008 poverty guidelines annual income for a household of three people is \$17,600. 150% of that amount is \$26,400, still less than the debtor's annual gross income. Accordingly, the application will be denied.

45. 08-32744-A-7 JOSEPH/ARMINTHIA SANDS HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK FSB, VS. 12-4-08 [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, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Olivehurst, California. The property has a value of \$275,000 and is encumbered by claims totaling approximately \$373,682. The movant's deed is in first priority position and secures a claim of approximately \$302,294.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 16, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

46. 08-36344-A-7 CORINNA HALFHIDE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-3-08 [12]

Tentative Ruling: The case will be dismissed.

This order to show cause was issued because the debtor failed to file her Exhibit D with the credit counseling certificate, as required by Interim Rule 1007(b)(3) and 11 U.S.C. § 521(b). This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

47. 08-36344-A-7 CORINNA HALFHIDE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-11-08 [15]

Tentative Ruling: The petition will be dismissed.

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The first installment fee in the amount of \$75 due on December 8, 2008 has not been paid. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

48. 08-30346-A-7 ANGOLA KHANTHAPHENGXAY HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE HOME LOANS, INC., VS. 12-1-08 [57]

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

The motion will be granted.

The movant, Countrywide Home Loans, Inc., seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$195,000 and is encumbered by claims totaling approximately \$431,273. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

49. 08-32746-A-7 RONALD/JULIE EDDLEMON HEARING - MOTION FOR
RFM #1 RELIEF FROM AUTOMATIC STAY
KEYBANK NATIONAL ASSOC., VS. 12-1-08 [63]

Tentative Ruling: Although the movant has given 31 days' notice of the hearing, the court will deem the motion to be brought pursuant to Local

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

The motion will be granted.

The movant, Keybank National Association, seeks relief from the automatic stay with respect to a 2006 Monterey 268C boat, Mercruise motor, and a trailer. This property has a value of \$60,000 in Schedule B and the movant's secured claim is approximately \$71,847.

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

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

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

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

50.	08-33147-A-7	EARSIE MILLER	HEARING - MOTION FOR
	DGN #1		RELIEF FROM AUTOMATIC STAY
	FORD MOTOR CREDIT CO., VS.		12-2-08 [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, Ford Motor Credit, seeks relief from the automatic stay with respect to a leased 2006 Jaguar S. The vehicle was surrendered to the movant pre-petition. And, the debtor has not made three pre-petition and three post-petition payments under the lease agreement. These facts make it unlikely that the trustee will attempt to assert any interest in the lease.

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

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

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

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

51. 08-33147-A-7 EARSIE MILLER HEARING - TRUSTEE'S MOTION FOR
RJH #2 ORDER APPROVING SALE
12-3-08 [24]

Tentative Ruling: The motion will be granted in part.

The chapter 7 trustee seeks authority to sell, free and clear of liens, a 2003 Toyota RAV EV at a public auction over the Internet, utilizing West Auctions, LLC. The sale will take place on or about January 8, 2009. The trustee does not know of any encumbrances against the vehicle.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to section 363(b), as it is in the best interests of the creditors and the estate.

But, given that the vehicle has no known encumbrances, the court will not approve the sale free and clear of liens. Moreover, the court may approve a sale free and clear of liens only held by parties that have been noticed with the motion.

52. 08-34347-A-11 MBD, INC. HEARING - MOTION FOR
KO #1 RELIEF FROM AUTOMATIC STAY
UMPQUA BANK, VS. 12-1-08 [84]

Tentative Ruling: The motion will be denied.

The movant, Umpqua Bank, seeks relief from the automatic stay as to the following real property:

- 82 finished residential lots in the debtor's Belvedere subdivision
- 91 unfinished (paper) lots in the Belvedere subdivision
- the debtor's Fleetwood Industrial Condominium project, consisting of 15

condominium warehouse units, five office units, three industrial pads, and one 2.5 acre vacant industrial land parcel

- the debtor's Montebello real property, consisting of 112.9 acres and three parcels of land

- the debtor's Cielo Vista real property, consisting of eight finished residential lots

The Belvedere lots are encumbered by a first priority deed of trust known as the Belvedere deed, which secures five promissory notes to the movant: the Belvedere note, the Fleetwood A&D note, the Fleetwood Construction note, the Montebello note, and the Cielo Vista note. Those notes represent all the debts owed by the debtor to the movant. They total approximately \$17,071,466.

The amount owed under the Belvedere note is approximately \$10,789,803. The amount owed under the Fleetwood A&D note is approximately \$1,955,224. The amount owed under the Fleetwood Construction note is approximately \$2,500,240. The amount owed under the Montebello note is approximately \$1,178,583. And the amount owed under the Cielo Vista note is approximately \$595,017.

The Fleetwood property is encumbered by a first priority deed of trust known as the Fleetwood A&D deed, securing the same five notes secured by the Belvedere deed, the Belvedere note, the Fleetwood A&D note, the Fleetwood Construction note, the Montebello note, and the Cielo Vista note. The Fleetwood property is further encumbered by a second priority deed of trust known as the Fleetwood Construction deed, also securing the same five notes secured by the Belvedere and Fleetwood A&D deeds.

The Montebello property is encumbered by one deed of trust known as the Montebello deed, which secures the Montebello note.

And, the Cielo Vista property is encumbered by one deed of trust known as the Cielo Vista deed, which secures the Cielo Vista note.

To summarize the foregoing, the debt to the movant is in the form of five notes, all of which are secured by the Belvedere lots and Fleetwood property, via three trust deeds. Two of the notes, namely the Montebello and the Cielo Vista notes, are also secured by the Montebello and Cielo Vista properties, respectively, via two trust deeds.

The court rejects the debtor's contention that the motion should be denied because the movant served the 20 largest unsecured creditors only with the notice of hearing and not with the motion. Service of the notice of hearing is sufficient notice to those creditors.

Turning to the merits of the motion, the court will not enforce any pre-petition agreement by the debtor, waiving the automatic stay. Such waivers are not enforceable for the same reasons waivers of the discharge of a debt are not enforceable. "It is against public policy for a debtor to waive the . . . protection[s] of the Bankruptcy Code." The Bank of China v. Huang (In re Huang), 275 F.3d 1173, 1177 (9th Cir. 2002). This is the law in this circuit. As to the cases cited by the movant, none of them are binding on this court; none of them are from a court within this circuit.

Moreover, the debtor's bankruptcy estate is not bound by the debtor's pre-petition waiver of a future automatic stay. The estate was not a party to any

agreement including that waiver. The bankruptcy estate was not formed until the petition was filed. See 11 U.S.C. § 541(a). The debtor cannot waive the automatic stay on behalf of a future bankruptcy estate.

Turning to section 362(d), the Montebello property has a value of \$3 million and is encumbered by a single claim held by the movant, totaling \$1,178,583. This leaves approximately \$1,821,417 of equity in the property.

As to the Cielo Vista property, the movant has valued it at \$900,000, while it is encumbered by a single claim held by the movant, totaling \$595,017. Even without scrutinizing the movant's valuation of the Cielo Vista property, it has approximately \$304,983 of equity. Given the equity in each of these properties, then, relief from stay under section 362(d)(2) is not appropriate.

The movant also has an equity cushion of approximately \$1,821,417 and \$304,983 in each of the properties, respectively. Those equity cushions are sufficient to adequately protect the movant's interest in the properties until the debtor proposes a plan or the case is dismissed. There is no evidence in the record establishing that any of the properties are depreciating in value. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc., 54 F.3d 1200, 1202 (11th Cir. 1995)).

As to the Belvedere property, the movant has submitted an appraisal by Scott Hamm. The appraisal values both the Belvedere phase one, 86 finished lots, and phase two, 91 unfinished lots.

Mr. Hamm has conducted two valuations of the 86 finished lots, an "as-is" valuation of \$6 million and an aggregate retail valuation of \$11,020,000. The movant urges the court to apply the "as-is" valuation. But, in the court's assessment, both valuations have flaws.

Initially, the court rejects Mr. Hamm's "as-is" valuation because the debtor is not engaged in the business of selling lots on an "as-is" or "wholesale" basis. Assigning an "as-is" value to the lots is inconsistent with the debtor's business purpose and its usual method of sale.

Both valuations were prepared on the assumption that 60 months would be necessary to sell all finished lots. Mr. Hamm has calculated the current "monthly absorption rate," i.e., the number of lots selling in one month period, and then projected that rate over the 60-month period. Mr. Hamm has assigned an absorption rate of 0.5 for months one through 12, a rate of 1.0 for months 13 through 24, a rate of 1.5 for months 25 through 36, and a rate of 2.0 for months 37 through 60. Mr. Hamm considers an absorption rate of 2.0 normal, meaning that he expects the real estate market to return to normal within 36 months. See Docket No. 97, Hamm Updated Appraisal at 21, 23. However, this is pure speculation, given the numerous economic factors that now exist. No expert can accurately predict when the market will recover. It may become normal in nine months or fifteen years. The court will not engage in any speculation about the recovery of the real estate market.

Further, in the Summary of Salient Facts & Conclusions of the appraisal, Mr. Hamm states that "[n]o [b]uilding [i]mprovements [a]re [b]eing [v]alued." Yet, the motion acknowledges that four of the 86 finished lots have improvements on them. According to the declaration of Michael Evans, three of the four improved lots have model homes on them, and the fourth lot has some unspecified improvements on it. See December 15 Michael Evans Decl. ¶7(a)(iii). The valuations do not take into account these improvements.

Next, the principal difference between the two valuations is that Mr. Hamm has deducted a list of expenses in the discounted valuation of \$6 million. He has deducted 2% for administrative expenses, 10% as developer or unearned profit expenses and 2% for sales expenses, and has applied a "discount factor," which ranges between approximately 2% and 53% of the subtotal discounted value of the lots. Mr. Hamm explains that the 10% developer or unearned profit is necessary "to provide incentive for someone to buy and sell the lots." See Hamm Updated Appraisal at 21. But, if a developer buys lots to develop and sell them, the developer is likely to buy more than one or two lots, which would decrease the projected 60-month time period for the disposal of the lots. In other words, Mr. Hamm's deduction of the developer profit is inconsistent with his projections of a 60-month sales period and absorption rates of 0.5 to 2.0.

Furthermore, Mr. Hamm does not explain how the deducted developer profit is different from the applied discount factor or rate, which he describes as a "rate used . . . to attract investors to a project of this magnitude." See Hamm Updated Appraisal at 21. The discount rate, at least in part, appears to serve the same purpose as the developer profit, an "incentive for [investors] to buy and sell the lots." See Hamm Updated Appraisal at 21. This leaves open the question of why did not Mr. Hamm incorporate the "attract investors" portion of the discount rate into the deducted developer profit.

The discount rate also includes "safe rate of funds, an inflation component and a risk premium." See Hamm Updated Appraisal at 21. However, Mr. Hamm does not explain what these factors mean and how he factored them into the discount rate. Also, on its face, Mr. Hamm's application of the discount rate appears inconsistent with some of his other assumptions. For instance, during the last 24 months of the projected 60-month period, Mr. Hamm applied the highest discount rates to the subtotal discounted value of the lots, from approximately 37% to approximately 53%. See Hamm Updated Appraisal at 23. On the other hand, Mr. Hamm projects "normal market" conditions during those 24 months. See Hamm Updated Appraisal at 21. Normal market conditions are not consistent with such steep discount rates, especially given that during the first 36 months of the projected 60-month period, when the absorption rate is as low as 0.5, the discount rates were less than 37%.

Much of the foregoing discussion also applies to the valuation of the 91 unfinished Belvedere lots. Mr. Hamm valued those lots at a raw land retail value of \$2,148,348, but then discounted this value to \$1,375,000, deducting a nearly identical list of expenses, as with the finished lots, and projecting a 36-month sales period. See Hamm Updated Appraisal at 24-26.

In light of the above deficiencies and inconsistencies, the court finds Mr. Hamm's valuations unpersuasive. For the value of the Belvedere lots, then, the court turns to the debtor's schedules. The court does not turn to the debtor's appraisal, as argued by the movant's reply, because that appraisal is an "as-is" valuation of the Belvedere lots. As discussed above, the debtor is not in the business of selling lots in an "as-is" or "wholesale" fashion. Thus, appraisals based on "as-is" valuations are not persuasive.

In Schedule A, the debtor has valued all Belvedere lots at \$14,275,000.

Assuming, without deciding, that the movant is correct in its retail valuation of the Fleetwood property at \$8,373,500, the value of both the Belvedere and Fleetwood properties totals \$22,648,500. Both properties secure a debt in the approximate amount of \$15,245,267 (the Belvedere note plus the Fleetwood A&D note plus the Fleetwood Construction note). This leaves approximately \$7,403,233 of equity in both the Belvedere and Fleetwood properties. Given such equity, relief from stay under section 362(d)(2) is not appropriate.

The movant also has an equity cushion of approximately \$7,403,233 in the Belvedere and Fleetwood properties. This equity cushion is sufficient to adequately protect the movant's interest in the properties until the debtor proposes a plan or the case is dismissed. There is no evidence in the record establishing that any of the properties are depreciating in value.

Finally, the court is not convinced that no plan can be confirmed. It is still very early in the case and it will give the debtor the opportunity to propose a plan.

53. 08-35447-A-7 JUAN/EMMA IGISAIAR HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 12-9-08 [19]

Final Ruling: The motion will be dismissed without prejudice because the proof of service documents indicate that the debtors were served at an incorrect address, 13410 Forrestwood Way, Sacramento, California 95814, whereas the correct address is 13410 Forrestwood Way, Lathrop, California 95330. Accordingly, service is defective.

54. 08-34348-A-7 JOSE RAMOS HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 11-21-08 [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, Bank of America, seeks relief from the automatic stay as to a real property in Saginaw, Texas. The property has a value of \$150,000 and is encumbered by claims totaling approximately \$169,729. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

55. 08-35048-A-7 ELAINE DUNN HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-9-08 [19]

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

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The first installment fee in the amount of \$75 due on November 19, 2008 was not paid.

However, the debtor paid the installment fee on December 19, 2008. No prejudice has resulted from the delay.

56. 08-35449-A-7 KARIMI MBAE HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, VS. 11-25-08 [13]

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

The motion will be granted.

The movant, GMAC Mortgage, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$197,000 and is encumbered by claims totaling approximately \$281,173. The movant's deed is in first priority position and secures a claim of approximately \$225,244.

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

administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 4, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

57. 08-35449-A-7 KARIMI MBAE HEARING - MOTION FOR
KAT #2 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 12-2-08 [25]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in South Bend, Indiana. The property has a value of \$40,000 and is encumbered by claims totaling approximately \$64,205. See Statement of Financial Affairs item 5. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 4, 2008.

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

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

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

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

58. 08-33450-A-7 JOSE/GLORIA SOLORIO HEARING - MOTION FOR
JMS #1 RELIEF FROM AUTOMATIC STAY
CITI RESIDENTIAL LENDING, INC., VS. 11-25-08 [33]

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

The motion will be granted.

The movant, Citi Residential Lending, Inc., seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$311,000 and is encumbered by claims totaling approximately \$534,331. The movant's deed is in first priority position and secures a claim of approximately \$432,823.

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

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

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

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

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

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

59. 08-35251-A-7 TONYA HUNT HEARING - MOTION FOR
MDE #1 RELIEF FROM AUTOMATIC STAY
LITTON LOAN SERVICING, LP, VS. 11-24-08 [11]

Tentative Ruling: The motion will be denied.

The movant, Litton Loan Servicing, seeks relief from the automatic stay as to a real property in Sutter, California. The property is encumbered by claims totaling approximately \$341,978. The movant's deed is in first priority position and secures a claim of approximately \$286,362. The movant argues that the property has a value of \$318,000, based on Schedule A in the bankruptcy case of Dwayne LaValleur, case no. 07-20004, who is the debtor's former spouse. See Schedule I.

Dwayne LaValleur's opinion of value in this case is irrelevant as he is not the debtor in this case. Only 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). Opinion of value by the debtor's former spouse in a separate bankruptcy case may not be evidence, even in the absence of contrary evidence.

And, the movant has made no effort to independently value the property. Accordingly, the court has no admissible evidence of value for the property. As a result, the court cannot determine whether there is any equity in the property or whether the movant's interest in it is adequately protected. Hence, the motion will be denied.

60. 08-35651-A-7 LEONARD SCROGGINS HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, FSB, VS. 12-12-08 [25]

Tentative Ruling: The motion will be denied.

The movant, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Redding, California. The movant contends that the value of the property is \$129,000 based on an appraisal, attached as Exhibit 5 to the motion. But, the appraisal is inadmissible because it lacks foundation, it is hearsay, and is not authenticated by a declaration or an affidavit by the individual who prepared it, Mark Boehle. See Fed. R. Evid. 802, 901(a). Further, the debtor has not rendered an opinion of value for the property in any of the bankruptcy petition documents. The court then has no admissible evidence of value. As a result, the court cannot determine whether there is any equity in the property or whether the movant's interest in it is adequately protected. Accordingly, the motion will be denied.

61. 08-35651-A-7 LEONARD SCROGGINS HEARING - MOTION FOR
WGM #3 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, FSB, VS. 12-12-08 [20]

Tentative Ruling: The motion will be denied.

The movant, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Redding, California. The movant contends that the value of the property is \$116,000 based on an appraisal, attached as Exhibit 5 to the

motion. But, the appraisal is inadmissible because it lacks foundation, it is hearsay, and is not authenticated by a declaration or an affidavit by the individual who prepared it, Mark Boehle. See Fed. R. Evid. 802, 901(a). Further, the debtor has not rendered an opinion of value for the property in any of the bankruptcy petition documents. The court then has no admissible evidence of value. As a result, the court cannot determine whether there is any equity in the property or whether the movant's interest in it is adequately protected. Accordingly, the motion will be denied.

62. 08-33252-A-7 ANTOINE CHATMAN AND HEARING - MOTION FOR
RDW #1 GLORIA COFFEY RELIEF FROM AUTOMATIC STAY
PATELCO CREDIT UNION, VS. 12-1-08 [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, Patelco Credit Union, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$300,000 and is encumbered by claims totaling approximately \$470,209. The movant holds both the first and second deeds against the property, but the motion relates only to the first deed, securing a claim of approximately \$409,509.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 23, 2008.

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

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

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

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

63. 08-33252-A-7 ANTOINE CHATMAN AND HEARING - MOTION FOR
RDW #2 GLORIA COFFEY RELIEF FROM AUTOMATIC STAY
PATELCO CREDIT UNION, VS. 12-1-08 [21]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Patelco Credit Union, seeks relief from the automatic stay with respect to a 2005 Acura TL.

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

The petition here was filed on September 17, 2008 and a meeting of creditors was first convened on October 22, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than October 17. The debtor filed a statement of intention on the petition date, indicating an intent to reaffirm the debt secured by the vehicle.

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

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

Here, although the debtor indicated an intent to reaffirm the debt secured by the vehicle, the debtor did not move to reaffirm within the 30-day deadline after the October 22, 2008 meeting of creditors or any time after. No reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on November 21, 2008, 30 days after the October 22 meeting of creditors.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on October 23, 2008, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on November 21, 2008.

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

64. 08-32954-A-7 EDWARD KOWALCIK HEARING - OBJECTION TO
REPORT OF NO DISTRIBUTION BY
SUSAN KOWALCIK
11-25-08 [14]

Tentative Ruling: The objection will be overruled.

The trustee filed a report of no distribution on October 24. Creditor Rich, Fuidge, Morris & Lane objects to the proposed closure of the case because RFML has pending section 523(a)(5) and section 523(a)(15) adversary proceeding claims against the debtor. RFML contends that "closing of this case prior to a determination of the adversary proceeding would be improper in that it might result in the discharge of obligations which are statutorily not properly discharged."

Closure of the case is a purely administrative event and it does not have legal consequences to the debtor's discharge. The debtor's case may be closed with or without the granting of a discharge. For instance, if the debtor does not complete the course on personal financial management, the case may be closed without the entry of discharge. The debtor would then have to reopen the case and complete the course, before discharge would be entered.

Also, many times cases remain open a long time after a discharge is entered. For example, if the trustee discovers assets that could be liquidated for the benefit of the creditors, the trustee will generally leave the case open as long as it takes him to administer those assets. In some cases, it may be years after the entry of a discharge.

Finally, even entry of a discharge does not defeat or render invalid pending section 523(a) claims. An entry of discharge merely states that the debtor is granted a discharge under section 727 of title 11. It does not state which claims have been discharged or which have not been discharged, and does not adjudicate pending section 523 claims. This means that, even if the debtor here receives a discharge, while RFML's section 523 claims are pending, the discharge would not affect the adjudication of those claims. Certainly, though, the claims remain subject to any actionable procedural and substantive defenses.

65. 08-30357-A-11 RIVER RUN COVE LAND HEARING - U.S. TRUSTEE'S MOTION
UST #2 DEVELOPMENT CO., INC. FOR ORDER DISMISSING CASE
11-20-08 [47]

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

The U.S. Trustee seeks conversion to chapter 7 or dismissal, pursuant to 11 U.S.C. § 1112(b), on the grounds that the debtor: (1) has not been paying its quarterly fees; (2) has not been filing its operating reports; and (3) has failed to provide her with requested records. The U.S. Trustee also contends that substantial or continuing loss to or diminution of the estate exists and that the debtor lacks reasonable likelihood of rehabilitation.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause." For purposes of this subsection, cause includes substantial or continuing loss to or diminution of the estate exists and the absence of a reasonable likelihood of rehabilitation, unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter, failure to timely provide information reasonably requested by the U.S. Trustee, and failure to pay the quarterly fees to the U.S. Trustee. See 11 U.S.C. § 1112(b)(4)(A), (F), (H), and (K).

The debtor filed the subject bankruptcy case on July 29, 2008. Since then, the debtor has filed only the August operating report and the check submitted to the U.S. Trustee for the payment of the third 2008-quarter fee has bounced. Also, despite requesting bank-related documentation from the debtor on October 14, 2008, at the meeting of creditors, the U.S. Trustee has not yet received anything from the debtor. Finally, this is a single asset real estate case, where the debtor owns five acres of land in Anderson, California. On November 21, 2008, however, the court granted a motion for relief from the automatic stay with respect to the property, in favor of Richard and Judy Kash and Palatine, LLC, who hold a first priority deed against the property, permitting them to conduct a non-judicial foreclosure and to obtain possession of the property. This has caused substantial diminution of the estate, as the property is the only asset of the estate.

Hence, the court concludes that cause exists for the conversion or dismissal of the case, pursuant to 11 U.S.C. § 1112(b)(4)(A), (F), (H), and (K). Given that the first deed of trust holders against the debtor's single real estate asset have been permitted to foreclose on and obtain possession of the property and that the debtor does not have any other property listed in the schedules that may be liquidated for the benefit of creditors, the court concludes that dismissal is in the best interest of the estate. Accordingly, the motion will be granted and the case will be dismissed.

66. 08-34257-A-7 MICHAEL/LINDA WARD HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 11-21-08 [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, Bank of America, seeks relief from the automatic stay as to a real property in Live Oak, California. The property has a value of \$203,000 and is encumbered by claims totaling approximately \$270,029. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 29, 2008.

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

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

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

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

67. 08-33458-A-7 MARIA VILLEZAR
MWB #1

HEARING - MOTION FOR
ORDER ABANDONING PROPERTY
OF THE ESTATE
11-19-08 [11]

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

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in her assisted living business, Lemar II Guest Home, a sole proprietorship, operated from the debtor's residence in Redding, California. The assets of the business are the necessary operational licenses and the real property, valued at \$270,000 with encumbrances totaling approximately \$340,000. The licenses have been listed with a value of "unknown" and the debtor has

claimed an exemption in them in the amount of \$1.

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

While the debtor's residence is over-encumbered by approximately \$70,000, the court has no evidence on the value, if any, of the business licenses. In Schedule B, the debtor has listed a value of "unknown" for the licenses. And, although the debtor has claimed an exemption in the licenses, the exemption is only in the amount of \$1. The court does not have sufficient information to determine what, if any, is the value of the licenses to the estate.

Also, even though the debtor is claiming that the business has a negative cash flow of \$2,985, her calculations are based on the total expenses in Schedule J, including her own personal expenses, such as medical, dental, transportation, recreation, and charitable contribution expenses, which may not qualify as business expenses. Absent more information on the foregoing issues, then, the court does not have sufficient information to make a determination under 11 U.S.C. § 554(b).

68. 07-27565-A-7 MATT SHEPHERD AND HEARING - MOTION TO
07-2471 KRISTINA GUSTAFSON PD #1 DISMISS CLAIMS
MTG. ELECTR. REGIS. SYS., INC., VS. 12-12-08 [32] O.S.T.
MATT SHEPHERD AND KRISTINA GUSTAFSON

Tentative Ruling: The motion will be granted and the 11 U.S.C. § 727(a) claims will be dismissed.

The plaintiff moves for dismissal of its 11 U.S.C. § 727(a) claims, including § 727(a)(3), § 727(a)(2)(A), § 727(a)(4)(A), and § 727(a)(4)(D), pursuant to Fed. R. Civ. P. 41(a)(2), as made applicable here via Fed. R. Bankr. P. 7041. The plaintiff contends that its discovery has yielded information indicating that those claims have no merit. Given this, the motion will be granted and those claims will be dismissed.

69. 08-33065-A-7 CHRIS/TRACY ANDREWS HEARING - MOTION TO
CEA #1 SET ASIDE JUDGMENT LIEN
VS. AMERICAN BANKERS INS. CO. OF FLORIDA 11-19-08 [29]

Final Ruling: The motion will be dismissed without prejudice.

First, the motion does not comply with Local Bankruptcy Rule 9014-1(e)(3) as it is not accompanied by a separate proof of service. Appending a proof of service to one of the motion documents does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record as such. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar.

Second, the proof of service attached to the motion indicates that the respondent was served at 400 N. Tustin Avenue, Suite 120, Santa Ana, CA 92705-3815. However, this is the address for the respondent's counsel and not for the respondent. The respondent's agent for service of process is on California Secretary of State's website. The proof of service for the motion does not show that the debtors have served the respondent with the motion. But, unless

counsel for the respondent agreed to accept service, service was improper. See In re Villar, 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

Finally, this motion was brought on at least 28 days' notice. Pursuant to Local Bankruptcy Rule 9014-1(f)(1), then, oppositions are due at least 14 days before hearing. Given that the hearing date for this motion is December 29, oppositions are due on or before December 15. The notice of hearing for the motion, however, states that oppositions are due on or before December 12. Because the notice of hearing states that oppositions are due more than 14 days before the hearing date, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

70. 08-33065-A-7 CHRIS/TRACY ANDREWS HEARING - MOTION TO
CEA #2 SET ASIDE JUDGMENT LIEN
VS. NCO FINANCIAL SYSTEMS, INC. 11-19-08 [27]

Final Ruling: The motion will be dismissed without prejudice.

First, the motion does not comply with Local Bankruptcy Rule 9014-1(e)(3) as it is not accompanied by a separate proof of service. Appending a proof of service to one of the motion documents does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record as such. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar.

Second, the proof of service attached to the motion indicates that the respondent was served at 10540 White Rock Road, #250, Rancho Cordova, CA 95670. However, this is the address for the respondent's counsel and not for the respondent. The respondent's agent for service of process is in records with the California Secretary of State. The proof of service for the motion does not show that the debtors have served the respondent with the motion. But, unless counsel for the respondent agreed to accept service, service was improper. See In re Villar, 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

Finally, this motion was brought on at least 28 days' notice. Pursuant to Local Bankruptcy Rule 9014-1(f)(1), then, oppositions are due at least 14 days before hearing. Given that the hearing date for this motion is December 29, oppositions are due on or before December 15. The notice of hearing for the motion, however, states that oppositions are due on or before December 12. Because the notice of hearing states that oppositions are due more than 14 days before the hearing date, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

71. 08-35968-A-7 STEPHEN LUNDY HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
CARRINGTON MORTGAGE SVCS. LLC, VS. 12-5-08 [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, Carrington Mortgage Services, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$220,990 and is encumbered by claims totaling approximately \$405,309. The movant's deed is in first priority position and secures a claim of approximately \$324,998.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 11, 2008.

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

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

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

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

72. 08-36269-A-7 NANCY KECK HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
DAIMLERCHRYSLER FIN'L, ETC., VS. 11-26-08 [7]

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

The motion will be granted.

The movant, Daimlerchrysler Financial Services Americas, seeks relief from the automatic stay with respect to an already repossessed or surrendered 2006 Chrysler Town and Country. The vehicle has a value of \$15,000 in the Statement

of Financial Affairs and its secured claim is approximately \$16,474. See Statement of Financial Affairs item 5.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on December 10, 2008. And, in the Statement of Financial Affairs, the debtor has indicated that the vehicle was repossessed or surrendered pre-petition, on September 3, 2008. This is cause for the granting of relief from stay.

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

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

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

73. 07-27071-A-7 RENATO/MARINA LEGUTAN HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-24-08 [31]

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

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

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Sacramento, 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 movant has produced evidence that the property has a value of \$249,000 and is encumbered by claims totaling approximately \$326,461. The movant's deed is the only encumbrance against the property.

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

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(d) is applicable to orders terminating the automatic stay.

75. 08-34173-A-7 DEBORA SIMPSON HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE BANK, N.A., VS. 11-25-08 [13]

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

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

With respect to the debtor, the property has a value of \$750,000 and is encumbered by claims totaling approximately \$740,426. The movant's deed is in first priority position and secures a claim of \$627,292. This leaves approximately \$9,573 of equity in the property.

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

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

The movant also has an equity cushion of approximately \$122,707. This equity cushion is sufficient to adequately protect the movant's interest in the property until the debtor obtains a discharge or the case is closed without entry of a discharge. See 11 U.S.C. § 362(c)(1) & (c)(2). At that point, the automatic stay will expire as a matter of law. The debtor is scheduled to obtain a discharge soon after January 5, 2009. The trustee filed a report of no distribution on November 4, 2008 and there is nothing in the file suggesting that the case will remain open a significant period beyond January 5, 2009. Thus, relief from stay as to the debtor under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the debtor.

As to the estate, the analysis is different. The trustee filed a report of no distribution on November 4, 2008.

The court concludes that this is cause for the granting of relief from stay as to the estate. Thus, the motion will be granted as to the estate pursuant to

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

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

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

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

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

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

76. 08-36373-A-7 PETER CURTIS HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE, INC., VS. 12-2-08 [8]

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

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 19, 2008.

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

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

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

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

78. 08-32775-A-7 VIKTOR TOMAK HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, VS. 11-24-08 [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 as to a real property in Rancho Cordova, California. The property has a value of \$380,000 and is encumbered by claims totaling approximately \$561,796. The movant's deed is in first priority position and secures a claim of approximately \$456,380.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 16, 2008.

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

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

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

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

79. 08-36077-A-7 TYONE/TAMIKA GLENN HEARING - MOTION TO
REMOVE THE CHAPTER 7 TRUSTEE
11-25-08 [23]

Tentative Ruling: The motion will be denied.

The debtor Tamika Glenn, moves the court to remove the chapter 7 trustee, arguing that he treated her unprofessionally when he requested additional paperwork from the debtors.

The trustee has filed a response, stating that the debtors submitted additional paperwork on or about December 15, allowing him to conclude the continued December 17 meeting of creditors. The trustee has filed a report of no distribution.

The court has no evidence of anything that would warrant removal of the trustee. The court has no evidence that the trustee has overstepped his obligations when he requested the additional paperwork. Requesting additional information and/or documentation is part of the trustee's investigative duties under the Bankruptcy Code. See 11 U.S.C. § 704(a)(4). Moreover, the debtors have already submitted the necessary paperwork for the trustee to conclude the meeting of creditors.

The motion will be denied.

80. 08-33378-A-7 MAI-LING BOUJWA HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 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, Bank of America, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$200,000 and is encumbered by claims totaling approximately \$408,234. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 29, 2008.

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

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

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

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

81. 08-27482-A-7 SOLITO/MARILOU REYES HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK FSB, VS. 12-4-08 [50]

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 as to a real property in Tracy, California. The property has a value of \$430,000 and is encumbered by claims totaling approximately \$560,365. The movant's deed is in first priority position and secures a claim of approximately \$438,775.

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

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed

of trust described in the motion against the subject real property.

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

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

82. 00-21583-A-11 LEWIS/JIM WESTLAKE
HSM #46

HEARING - MOTION FOR
ORDER TO DISCHARGE PLAN ADMINIS-
TRATOR AND ABANDON REMAINING
PROPERTY OF PLAN ESTATE
12-8-08 [1355]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the plan administrator, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtors, 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 plan administrator, Jonathan Tesar, who is also the disbursing agent under the debtors' chapter 11 plan, moves for an order discharging him from his duties and abandoning the remaining estate property to the debtors. Mr. Tesar has liquidated all sellable estate property and has made all payments to creditors called for under the plan. At this time, he is prepared to issue disbursements to administrative expense creditors, including counsel for Mr. Tesar, counsel for the debtors, the accountants for the estate, and the estate's real estate broker.

Due to the failure of the estate's real estate project, the liquidation of estate property did not generate sufficient funds to pay all administrative expenses in full or pay anything to unsecured creditors. As a result, the administrative claimants, with the exception of Mr. Tesar's counsel, are receiving a pro-rata 91% distribution. Mr. Tesar's counsel is receiving an 89% distribution, which would be decreased by a maximum of \$1,000 in the event of shortage of funds, but would be increased in the event of an overage to the 91% distribution rate.

The debtors' confirmed plan provides for the discharge of the plan administrator's duties upon the sale or abandonment of the post-confirmation estate's property and the filing of a final report by the administrator. See Plan, Docket No. 1281, at 12.

11 U.S.C. § 554(c) also provides that any scheduled property not otherwise

administered at the time of closing is abandoned to the debtor and deemed administered for purposes of 11 U.S.C. § 350. 11 U.S.C. § 350 requires the closure of a case when an estate has been fully administered and the court has discharged the trustee.

The debtors' plan was confirmed on February 18, 2005. A final decree closing the estate and discharging the trustee was entered on December 21, 2005. Mr. Tesar has filed his final report, after completing the liquidation of sellable estate property and making disbursements to creditors in accordance with the terms of the plan. Given this, the court will enter an order abandoning any remaining estate property back to the debtors, discharging Mr. Tesar from his duties and closing the case.

83. 08-32584-A-7 REBECCA MARQUEZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-9-08 [31]

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 third installment fee in the amount of \$74.75 due on December 3, 2008 was not paid.

However, the debtor paid the installment fee on December 19, 2008. No prejudice has resulted from the delay.

84. 08-33285-A-7 MISTY JURIN HEARING - MOTION FOR
RSL #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 12-1-08 [16]

Tentative Ruling: The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay with respect to a 2004 Honda Civic. The vehicle has a value of \$11,350 and its secured claim is approximately \$12,049.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on November 12, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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

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

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

and is depreciating in value.

85. 08-28487-A-11 ROOM SOURCE, LLC CONT. HEARING - MOTION OF
DD #1 KLAUSSNER FURNITURE INDUSTRIES,
INC. FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE CLAIM
10-20-08 [266]

Tentative Ruling: The motion will be denied.

Klaussner Furniture Industries, Inc. moves this court for the allowance and payment of an administrative claim in the amount of \$57,182.24 for goods delivered to the debtor within 20 days before the petition filing, pursuant to 11 U.S.C. § 503(b) (9).

The debtor opposes the motion, contending that the claim should not be allowed because the movant received \$295,586.79 in preferential transfers from the debtor within 90 days before the petition filing. See 11 U.S.C. § 502(d). In the alternative, the debtor argues that the movant received a payment in the amount of \$36,317.40, on account of the liability referenced in the motion, reducing the allegedly still-owed sum of \$57,182.24.

Section 503(b) (9) provides that "after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business."

However, section 502(d) provides that "the court shall disallow any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 547 of this title, unless such entity or transferee has paid the amount, or turned over any such property." This includes the disallowance of administrative priority claims. MicroAge, Inc. v. Viewsonic Corp. (In re MicroAge, Inc.), 291 B.R. 503, 508 (B.A.P. 9th Cir. 2002). Given this and given the avoidable payments received by the movant from the debtor within 90 days before the petition filing, the court concludes that the movant's administrative claim under section 503(b) (9) must be disallowed. The motion will be denied.

86. 08-31987-A-7 JOSE VARGAS HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-1-08 [32]

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 25, 2008. This is cause for dismissal. See 11 U.S.C. § 707(a) (1).

87. 08-33287-A-7 JAMES/JANE STANTON HEARING - MOTION FOR
TJS #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 11-24-08 [21]

Tentative Ruling: The motion will be dismissed as moot.

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay with respect to a 2003 BMW 530i.

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

The petition here was filed on September 18, 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 18. The debtor filed a statement of intention on the petition date, indicating an intent to reaffirm the debt secured by the vehicle.

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

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

Here, although the debtor indicated an intent to reaffirm the debt secured by the vehicle, the debtor did not move to reaffirm within the 30-day deadline after the October 24, 2008 meeting of creditors or any time after. No reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on November 23, 2008, 30 days after the meeting of creditors.

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

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

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

88. 08-36187-A-7 DELTON SCOTT HEARING - MOTION FOR
APN #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO AUTO FINANCE, VS. 11-25-08 [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 Auto Finance, seeks relief from the automatic stay with respect to a leased 2005 Chevrolet 2500 pickup. The vehicle has been identified in the schedules as a 2005 Chevy Silverado. The debtor has not made one pre-petition and one post-petition payments under the lease agreement. Approximately 28 more monthly lease payments are owed to the movant on account of the lease agreement. And, the trustee filed a report of no distribution on December 17, 2008. These facts make it unlikely that the trustee will attempt to assert any interest in the lease. Also, the movant has produced evidence that the debtor does not carry insurance coverage for the vehicle.

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

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

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

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

89. 08-33988-A-7 LAURA TROTCHIE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-26-08 [15]

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 25, 2008. This is

cause for dismissal. See 11 U.S.C. § 707(a)(1).

90. 08-36292-A-7 CRYSTAL FINDLEY HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-11-08 [20]

Tentative Ruling: The petition will be dismissed.

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The first installment fee in the amount of \$100 due on December 8, 2008 has not been paid. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

91. 07-23593-A-7 KAREN/RANDALL AMORE HEARING - MOTION TO
SF #3 COMPROMISE CONTROVERSY RE
ESTATE'S INTEREST IN LITIGATION
11-20-08 [66]

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 debtors, 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 debtors over the estate's interest in a lawsuit by the debtors against Ford Motor Company, Ford Motor Credit Company, Inc., Big Valley Ford, Inc., and Manteca Ford-Mercury, Inc. The trustee and the debtors disagree over the prosecution of the lawsuit. Under the terms of the compromise, the debtors will pay the estate the non-exempt sum of \$4,500 in full satisfaction of the estate's interest in the lawsuit claim(s). The debtors have valued the lawsuit at \$25,000 and have claimed an \$18,811.10 exemption in it. Hence, the non-exempt value of the lawsuit is only \$6,188.90.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the small amount at stake and the delay, risks, and costs of prosecuting the lawsuit, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of

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

92. 08-35394-A-7 DAVID/BARBARA ENOCHSON HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, FSB, VS. 12-2-08 [17]

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

The motion will be granted.

The movant, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Vacaville, California. The property has a value of \$336,000 and is encumbered by claims totaling approximately \$535,181. The movant holds both the first and second deeds against the property, but the motion relates only to the first deed, securing a claim of approximately \$480,965.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 12, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

93. 08-37094-A-7 RICKY/SHARI YOUNGER
WGM #1
AMERICAN HOME MTG. SVCING. INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-10-08 [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, American Home Mortgage Servicing, Inc., seeks relief from the automatic stay as to a real property in Grass Valley, California. The property has a value of \$348,500 and is encumbered by claims totaling approximately \$473,314. The movant's deed is in first priority position and secures a claim of approximately \$374,805.

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

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

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

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

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

94. 08-37094-A-7 RICKY/SHARI YOUNGER
WGM #2
JP MORGAN CHASE, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-12-08 [26]

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, JPMorgan Chase, seeks relief from the automatic stay as to a real property in Antelope, California. The property has a value of \$269,000 and is encumbered by claims totaling approximately \$447,157. The movant's deed is in first priority position and secures a claim of approximately \$361,202.

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

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

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

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

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

95. 08-31195-A-7 TRIEU PHAM HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
AMERICA'S WHOLESALE LENDER, VS. 11-25-08 [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, America's Wholesale Lender, seeks relief from the automatic stay as to a real property in Antelope, California. The property has a value of \$170,000 and is encumbered by claims totaling approximately \$346,080. The

movant's deed is in first priority position and secures a claim of approximately \$235,676.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on September 23, 2008.

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

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

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

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

96. 08-34495-A-7 MARK/VIRGINIA WOOTEN HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 11-21-08 [9]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Weed, California. The property has a value of \$485,000 and is encumbered by claims totaling approximately \$511,411. The movant holds both the first and second deeds against the property, but the motion relates only to the first deed, securing a claim of approximately \$396,411.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 3, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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 as to a real property in Sacramento, California. The property has a value of \$259,000 and is encumbered by claims totaling approximately \$452,400. The movant's deed is in first priority position and secures a claim of approximately \$370,400.

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

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

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

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

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

98. 08-36396-A-7 ARTHUR MILLER, JR. HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AMERICA'S SERVICING CO., VS. 12-2-08 [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, America's Servicing Co., seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$250,000

and is encumbered by claims totaling approximately \$441,007. See Schedule A. The movant's deed is in first priority position, securing a claim of \$376,119.

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

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

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

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

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

99. 08-36696-A-7 RONALD/MONICA THOMAS HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 12-9-08 [8]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Bank of New York, seeks relief from the automatic stay as to a real property in Roseville, California. The property has a value of \$310,050 and is encumbered by claims totaling approximately \$489,216. The movant's deed is in first priority position and secures a claim of approximately \$368,745.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 16, 2008.

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

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

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

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

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

100. 08-35199-A-7 DAMIAN CENDEJAS
PD #1
NATIONAL CITY MORTGAGE, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-21-08 [13]

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

The motion will be granted.

The movant, National City Mortgage, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$80,000 and is encumbered by claims totaling approximately \$235,466. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

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