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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LAZARO S. COYOTZI, et al.,

CASE NO. CV F 09-1036 LJO SMS

Plaintiffs,

**ORDER TO VACATE HEARING AND TO
REQUIRE STATUS REPORT**
(Doc. 8.)

vs.

COUNTRYWIDE FINANCIAL
CORPORATION, et al,

Defendants.

Defendants Countrywide Financial Corporation and Countrywide Home Loans, Inc. filed a F.R.Civ.P. 12(b)(6) motion to dismiss and set a September 3, 2009 hearing. On August 12, 2009, plaintiff Lazaro S. Coyotzi (“Mr. Coyotzi”) filed a Chapter 7 bankruptcy proceeding, Case No. 09-92530, in the United States Bankruptcy Court, Eastern District of California. As such, this action is part of the Mr. Coyotzi’s bankruptcy estate, and the bankruptcy trustee has acquired discretion whether to pursue the action pending the bankruptcy. *See Estate of Spirtos v. San Bernardino Superior Court Case*, 442 F.3d 1172, 1175 (9th Cir. 2006); *Wieburg v. GTE Southwest Inc.*, 272 F.3d 302, 206 (5th Cir. 2001).

This Court is not in a position to address the F.R.Civ.P. 12(b)(6) motion to dismiss in light of the recently filed bankruptcy. On the basis of good cause, this Court:

1. VACATES the September 3, 2009 hearing on the F.R.Civ.P. 12(b)(6) motion to dismiss and holds in abeyance a ruling on the motion; and
2. ORDERS the parties, no later than September 14, 2009, to file a joint status report to

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address the status of Mr. Coyotzi's bankruptcy, including whether the trustee will pursue this action, and this Court's ability and authority to rule on the F.R.Civ.P. 12(b)(6) motion to dismiss during the pending bankruptcy. The Countrywide defendants need file no reply papers for the F.R.Civ.P. 12(b)(6) motion to dismiss.

IT IS SO ORDERED.

Dated: August 14, 2009

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE