

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 8, 2013 at 10:30 a.m.

1. [13-27216-E-7](#) GEORGE UPTON MOTION TO COMPEL
UST-2 Pro Se 7-15-13 [[61](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and parties requesting special notice on July 15, 2013. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion to Compel. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Acting United States Trustee for the Eastern District of California ("UST") moves the court for an order compelling the Debtor to appear at his meeting of Creditors on August 19, 2013, at 12:00 p.m. pursuant to 11 U.S.C. §§ 105(a), 341 and 343.

The UST states that Debtor has not filed any evidence that he participated in a credit counseling course during the 180 days prior to the petition date, as required by 11 U.S.C. § 109(h)(1), nor has the Debtor filed a request for waiver. Debtor has not filed schedules or the statement of financial affairs. Based on these deficiencies, the UST filed a motion to dismiss, which was continued by the court, so that parties in interest can provide the court with information as to whether the case should be dismissed, whether further discovery is required or if other proceedings are appropriate. Dckt. 55.

August 8, 2013 at 10:30 a.m.

The Debtor has failed to attend two prior dates for the meeting of creditors, June 24, 2013, and July 8, 2013. The meeting was continued to August 19, 2013. The UST requests that the court enter an order compelling the Debtor to appear at this continued meeting.

DISCUSSION

Pursuant to 11 U.S.C. § 343,

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

Most often, in cases which the debtor has without good cause failed to appear, the case will be dismissed. 3 COLLIER ON BANKRUPTCY ¶ 343.09 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) However, when dismissal is not in the best interest of the estate, the court may choose to compel the Debtor's attendance. *Id.* The court may use its contempt power when necessary. *Id.*

Here, as discussed in the court's ruling on the Motion to Dismiss, the court found that cause existed to dismiss the case, but because of the circumstances of the Debtor and the prior repeated filings by April Dawn Gianelli, the Debtor's significant other, the court continued the hearing to allow other parties in interest to provide the court with information as to whether this case should be dismissed or if other proceedings were necessary. See Dckt. 55. As dismissal is not appropriate and to provide the court with the appropriate information from the Debtor, the court will compel the Debtor's attendance at the continued meeting of creditors. This will enable the parties in interest to obtain the proper information requested by the court.

The motion to compel Debtor George Dallas Upton, III to attend the continued meeting of creditors on August 19, 2013 at 12:00 p.m. is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Compel filed by the United States Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Debtor George Dallas Upton, III shall appear at the continued meeting of creditors set for August 19, 2013 at 12:00 p.m.

IT IS FURTHER ORDERED that the failure to comply with this order may result in the imposition of sanctions, including, without limitation, (1) dismissal of the Chapter

August 8, 2013 at 10:30 a.m.

7 case with prejudice; (2) corrective monetary sanctions of \$750.00; or, (3) imposition of a pre-filing review requirement as a condition of filing another bankruptcy case.

2. [12-36419](#)-E-11 KFP-LODI, LLC

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
9-10-12 [[1](#)]

Debtor's Atty: Scott A. CoBen

Notes:

Continued from 7/1/13 to be heard in conjunction with other related matters in this case.

Operating Report filed 7/15/13

Final Ruling: At the request of the court, the hearing on this matter is continued to **10:30 a.m.** on **August 29, 2013**. No appearance required at the August 8, 2013 hearing.

3. [12-36419](#)-E-11 KFP-LODI, LLC
RPG-1 Scott A. CoBen

CONTINUED AMENDED MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-24-13 [[245](#)]

SGB1, LLC VS.

Final Ruling: At the request of the court, the hearing on this matter is continued to **10:30 a.m.** on **August 29, 2013**. No appearance required at the August 8, 2013 hearing.

4. [12-36419](#)-E-11 KFP-LODI, LLC
SAC-3 Scott A. CoBen

CONTINUED MOTION TO VALUE
COLLATERAL OF SGBI, LLC
4-11-13 [[165](#)]

CONT. FROM 6-6-13

Local Rule 9014-1(f)(1) Motion - Stipulation Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor-in-Possession, respondent creditor, and Office of the United States Trustee on April 11, 2013. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is continued to 10:30 a.m. on September 18, 2013. No appearance at the August 8, 2013 hearing required.

Debtor and Debtor-in-Possession, KFP Lodi, LLC, Secured Creditor SGB1, LLC stipulated to continue the hearing on the Motion to Value Collateral to September 18, 2013, to attempt to resolve the matter. Dckt. 278.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral filed by the Debtor in Possession having been presented to the court, and upon review of the pleadings, the order of the court continuing the hearing filed on July 25, 2013 (Dckt. 278), and good cause appearing,

IT IS ORDERED that the Motion to Value Collateral is continued to 10:30 a.m. on September 18, 2013.

5. [12-36419](#)-E-11 KFP-LODI, LLC CONTINUED MOTION TO APPROVE
SAC-6 Scott A. CoBen FIRST AMENDED DISCLOSURE
STATEMENT FILED BY DEBTOR
4-16-13 [[181](#)]

Final Ruling: At the request of the court, the hearing on this matter is continued to **10:30 a.m.** on **August 29, 2013**. No appearance required at the August 8, 2013 hearing.

6. [12-36419](#)-E-11 KFP-LODI, LLC CONTINUED MOTION FOR RELIEF
TMG-2 Scott A. CoBen FROM AUTOMATIC STAY
6-27-13 [[249](#)]

TERRACOTTA REALTY FUND, LLC
VS.

Final Ruling: At the request of the court, the hearing on this matter is continued to **10:30 a.m.** on **August 29, 2013**. No appearance required at the August 8, 2013 hearing.

7. [13-26159](#)-E-11 IVAN RAVLOV
SAC-15 Scott A. CoBen

MOTION TO VALUE COLLATERAL OF
DEUTSCHE BANK NATIONAL TRUST
COMPANY
7-25-13 [[166](#)]

**COUNSEL FOR DEUTSCHE BANK NATION TRUST COMPANY
APPEARING ON ITEM 8 BELOW
SHALL BE CALLED FOR THE HEARING ON THIS MOTION
AND IDENTIFY FOR THE COURT AND COUNSEL FOR THE DEBTOR
THE IDENTIFY OF THIS CREDITOR AND PROPER SERVICE ADDRESS**

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, respondent creditor, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to deny the Motion to Value Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to value the collateral of Deutsche Bank National Trust Company, as Trustee for Argent Securities, Inc., Asset-Backed Pass-Through Certificate, Series 2004 W-2.

The court recognizes that Deutsche Bank National Trust Company, as a federally chartered bank, can be a challenging entity to identify for providing service. The Comptroller of the Currency lists on his official web page that Deutsche Bank National Trust Company is based in Los Angeles, California (certificate No. 26732). Unfortunately, the Comptroller does not provide address information on-line. In other cases Deutsche Bank National Trust Company has provided the following addresses as its business offices where there are officers for service to be made in federal court proceedings:

1761 East St.
Andrew Place, Second Floor
Santa Ana, California 92705

and

2000 Avenue of the Stars, Suite 910-N
Los Angeles, California 90067

Deutsche Bank National Trust Company response to Order to Show Cause, filed October 26, 2011, Bankr. ED Cal Case No. 11-38898.

The certificate of service states that "Deutsche Bank National Trust Company Americas (which is not the Creditor, "Deutsche Bank National Trust Company," as Trustee, but appears to the holding company or shareholder). An entity called "Deutsche Bank National Trust Company Delaware" is listed on the Certificate of Service. Dckt. 171. No indication is given by the Debtor as to where this address was located and whether "Deutsche Bank National Trust Company" is the same entity as "Deutsche Bank National Trust Company."

The court checked the Delaware Secretary of State website for an on-line corporation identity search. While more than 700 entities with the words "Deutsche Bank" in their names were disclosed, there were no entities with "Deutsche Bank Nation" in their name when the search was refined in that limited way.

While counsel states in his declaration that an attorney for Deutsche Bank National Trust Company, as Trustee, is the creditor, he does not state what address that the Creditor's attorney stated as the address for service.

The Comptroller of the Currency lists Deutsche Bank National Trust Company as one entity chartered with that office, certificate number 26732, and being located in Los Angeles, California (which is consistent with the addresses provided by Deutsche Bank National Trust Company to the court previously). There is another entity registered with the Comptroller named Deutsche Bank Trust Company, National Association, having a certificate number 34056, located in New York, New York.
<http://www.occ.treas.gov/topics/licensing/national-bank-lists/index-active-bank-lists.html>.

The court having no idea who or what is "Deutsche Bank National Trust Company Delaware," the company "Deutsche Bank National Trust Company" having given two addresses in California for service, the Motion naming Deutsche Bank National Trust Company and the proof of service attesting to serving an entity named Deutsche Bank National Trust Company Delaware, and the Debtor not providing the court with any information as to how and why the addresses are proper for service, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

8. [13-26159-E-11](#) IVAN RAVLOV MOTION TO VALUE COLLATERAL OF
SAC-17 Scott A. CoBen DEUTSCHE BANK NATIONAL TRUST
COMPANY
7-25-13 [[177](#)]

**APPEARANCE OF COUNSEL FOR
DEUTSCHE BANK NATIONAL TRUST COMPANY
REQUIRED FOR AUGUST 8, 2013 HEARING
TELEPHONIC APPEARANCE PERMITTED**

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, respondent creditor, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to continue the hearing on the Motion to Value Collateral to _____, 2013. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to value the collateral of Deutsche Bank National Trust Company, as Trustee for the Indy Mac Indx Mortgage Loan Trustee 2005-AR6,

Mortgage Pass-Through Certificates, Series 2005-AR6 Under the Pooling and Servicing Agreement dated March 1, 2005. The Debtor is the owner of real property commonly known as 3490 Lewiston Road, West Sacramento, California. Debtor offers the Declaration of James A. Chaussee, a licensed real estate appraiser with 24 years' experience, who opines that the value of the property is \$360,000.00.

CREDITOR'S OPPOSITION

Creditor Deutsche Bank National Trust Company, as Trustee for the Indy Mac Indx Mortgage Loan Trustee 2005-AR6, Mortgage Pass-Through Certificates, Series 2005-AR6 Under the Pooling and Servicing Agreement dated March 1, 2005 ("Creditor") opposes the motion on the grounds that Debtor has failed to prove the validity, priority, and extend of any senior lien. Creditor states Debtor has failed to present any evidence regarding how or why the City of West Sacramento obtained a statutory lien senior to Creditor's claim.

Creditor also argues that Debtor's appraisal report is based on an unauthenticated article and home inspection reports provided by the Debtor. Creditor states that the appraisal report makes large adjustments to the sales price of comparable properties based on a home inspection report and an article from the Sacramento Business Journal regarding defective construction. Creditor states this is hearsay evidence and should not be admissible as evidence as to the value of the property.

Creditor also argues that the subject real property must be valued at the time of confirmation to receive the "indubitable equivalent" of its claim. Creditor states that this motion is premature as plan confirmation may not take place for several months and Debtor's Disclosure Statement has not been approved.

Creditor requests that the motion be denied, the property valued at the time of confirmation, or for the Creditor to have more time to file a proper appraisal.

DISCUSSION

As the present motion was set on Federal Rule of Bankruptcy Procedure 9014-1(f)(2), the court will continue the hearing to allow Creditor to obtain an appraisal as to the value of the property. If the parties cannot agree on the value of the subject real property, the court will set an evidentiary hearing.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Value is continued to _____, 2013.

9. 13-26159-E-11 IVAN RAVLOV MOTION TO VALUE COLLATERAL OF
SAC-16 Scott A. CoBen JPMORGAN CHASE BANK, N.A.
7-25-13 [172]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, respondent creditor, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$166,430.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors seeks to value the collateral of JPMorgan Chase Bank, N.A. Debtors are the owners of the real property commonly known as 7513 Johanne Court, Citrus Heights, California. Debtor offers the Declaration of James A. Chaussee, a licensed real estate appraiser with 24 years' experience, who opines that the value of the property is \$170,000.00.

The Debtor asserts that there are three statutory liens on the subject real property, including \$3,000.00 (Sacramento County Utilities), \$450.00 (Allied Waste Company), and \$120.00 (Citrus Heights Water District). JPMorgan Chase Bank, N.A.'s first deed of trust secures a loan with a balance of approximately \$167,688.00. Therefore, the respondent creditor's claim secured by a lien on the vehicle's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$166,430.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a first deed of trust recorded against the real property commonly known as 7513 Johanne Court, Citrus Heights, California, is determined to be a secured claim in the amount of \$166,430.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$170,000.00.

10. [13-26159](#)-E-11 IVAN RAVLOV MOTION TO VALUE COLLATERAL OF
SAC-18 Scott A. CoBen JPMORGAN CHASE BANK, N.A.,
7-25-13 [[182](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, respondent creditor, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to value the collateral of JPMorgan Chase Bank, N.A. Debtor is the owner of real property commonly known as 3490 Lewiston Road, West Sacramento, California. Debtor offers the Declaration of James A. Chaussee, a licensed real estate appraiser with 24 years' experience, who opines that the value of the property is \$360,000.00.

The Debtor asserts that there is a statutory lien on the subject real property for \$1000.00 by the City of West Sacramento. Deutsche Bank National Trust Company's first deed of trust secures a loan with a balance of \$610,385.67. JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of \$168,011.00. Bank of America, N.A.'s third deed of trust secures a loan with a balance of \$155,770.00. Wells Fargo Bank, N.A.'s fourth deed of trust secures a loan with a balance of \$138,915.00. Therefore, JPMorgan Chase Bank, N.A.'s claim secured by a second deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 3490 Lewiston Road, West Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$360,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

11. [13-26159](#)-E-11 IVAN RAVLOV
SAC-19 Scott A. CoBen

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
7-25-13 [[187](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, respondent creditor, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to value the collateral of Bank of America, N.A. Debtor is the owner of real property commonly known as 3490 Lewiston Road, West Sacramento, California. Debtor offers the Declaration of James A. Chaussee, a licensed real estate appraiser with 24 years' experience, who opines that the value of the property is \$360,000.00.

The Debtor asserts that there is a statutory lien on the subject real property for \$1000.00 by the City of West Sacramento. Deutsche Bank National Trust Company's first deed of trust secures a loan with a balance of \$610,385.67. JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of \$168,011.00. Bank of America, N.A.'s third deed of trust secures a loan with a balance of \$155,770.00. Wells Fargo Bank, N.A.'s fourth deed of trust secures a loan with a balance of \$138,915.00. Therefore, Bank of America, N.A.'s claim secured by a third deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a third deed of trust recorded against the real property commonly known as 3490 Lewiston Road, West Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$360,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

12. [13-26159-E-11](#) IVAN RAVLOV
SAC-20 Scott A. CoBen

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
7-25-13 [[192](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, respondent creditor, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to value the collateral of Wells Fargo Bank, N.A. Debtor is the owner of real property commonly known as 3490 Lewiston Road, West Sacramento, California. Debtor offers the Declaration of James A. Chaussee, a licensed real estate appraiser with 24 years' experience, who opines that the value of the property is \$360,000.00.

The Debtor asserts that there is a statutory lien on the subject real property for \$1,000.00 by the City of West Sacramento. Deutsche Bank National Trust Company's first deed of trust secures a loan with a balance of \$610,385.67. JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of \$168,011.00. Bank of America, N.A.'s third deed of trust secures a loan with a balance of \$155,770.00. Wells Fargo Bank, N.A.'s fourth deed of trust secures a loan with a balance of \$138,915.00. Therefore, Wells Fargo Bank, N.A.'s claim secured by a fourth deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a fourth deed of trust recorded against the real property commonly known as 3490 Lewiston Road, West Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$360,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

13. [13-26159](#)-E-11 IVAN RAVLOV
SAC-21 Scott A. CoBen

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
7-25-13 [[197](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, respondent creditor, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$360,000.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to value the collateral of JPMorgan Chase Bank, N.A. Debtor is the owner of real property commonly known as 7716 Belle Rose Circle, Roseville, California. Debtor offers the Declaration of James A. Chaussee, a licensed real estate appraiser with 24 years' experience, who opines that the value of the property is \$360,000.00.

The first deed of trust secures a loan with a balance of approximately \$435,000.00. Therefore, the respondent creditor's claim secured by a lien on the vehicle's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$360,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a first deed of trust recorded against the real property commonly known as 7716 Belle Rose Circle, Roseville, California, is determined to be a secured claim in the amount of \$360,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$360,000.00.

14. [13-26159-E-11](#) IVAN RAVLOV MOTION TO VALUE COLLATERAL OF
SAC-22 Scott A. CoBen JPMORGAN CHASE BANK, N.A.
7-25-13 [[202](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, respondent creditor, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to value the collateral of JPMorgan Chase Bank, N.A. Debtor is the owner of real property commonly known as 7716 Belle Rose Circle, Roseville, California. Debtor offers the Declaration of James A. Chaussee, a licensed real estate appraiser with 24 years' experience, who opines that the value of the property is \$360,000.00.

The first deed of trust secures a loan with a balance of approximately \$435,000.00. JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$236,901.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 7716 Belle Rose Circle, Roseville, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$360,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Tim Brown, Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors, and Office of the United States Trustee on July 11, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Contempt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The hearing on the Motion to Hold Person in Contempt is continued to 10:30 a.m. on August 22, 2013. The Chapter 7 Trustee shall provide notice of the continued hearing, to be conducted at the United States Bankruptcy Court, Modesto Division. No appearance at the August 8, 2013 hearing is required.

The Chapter 7 Trustee, Michael D. McGranahan, moves the court for an Order to Show Cause why Tim Brown should not be adjudged in civil contempt for failing and refusing to comply with the Judgment of the court. The Trustee states that the court entered judgment in Adversary Proceeding No. 12-09003 against Tim Brown determining that the following vehicles are property of the bankruptcy estate with a total value of \$42,915.00, which must be turned over by Mr. Brown to the Trustee on or before December 31, 2013:

(a) 1997 Harley Davidson Red Fat Boy Motorcycle, VIN ending in 32282;

(b) 2008 Harley Davidson Cross Bones Motorcycle, VIN ending in 40575; and

(c) 2007 Chevrolet Corvette Automobile, Licence No. 5XYR543, VIN ending in 33800.

The Trustee states that he has made repeated requests to Mr. Brown and his counsel seeking compliance with the Judgment for the turnover of the property, but Mr. Brown has failed and refused to turn over the vehicles.

Additionally, the Trustee states he has incurred attorney's fees in the amount of \$1,593.56 in fees and expenses incurred in employing his counsel to enforce the Judgment.

DISCUSSION

Bankruptcy Courts have the jurisdiction to impose sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The court also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see also 11 U.S.C. § 105(a).

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience to a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Lehtinen*, 564 F.3d at 1058. However, the court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

Here, the Trustee has shown that Time Brown has failed to comply with the court's Judgment order to turn over the personal property described above. Tim Brown has failed to respond to the Motion as required under Local Bankruptcy Rule 9013-1(f)(1).

Continuance of Hearing

The court continues the hearing to issue an order requiring Tina Brown to appear in person at continued hearing on August 22, 2013. The Trustee shall provide notice of the continued hearing to the court's regular law and motion date for the Modesto Division Courthouse.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Contempt filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Hold Person in Contempt is continued to 10:30 a.m. on August 22, 2013, at the Modesto Division Courthouse.

IT IS FURTHER ORDERED that Tim Brown is ordered to appear in person at the continued hearing at 10:30 p.m. on August 22, 2013. The appearance must be made in person, with no telephonic appearance by Tim Brown permitted for this hearing.

IT IS FURTHER ORDERED that if Tim Brown fails to attend the August 22, 2013 hearing, the court shall issue

corrective sanctions (in addition to such sanctions as warranted under the present Motion), which may include,

1. \$1,000.00 in corrective monetary sanctions,
2. Ordering the Tim Brown to appear at a further continued hearing, with the failure to do so the basis for the court issuing further corrective sanctions in the amount of \$2,000.00, and
3. Issuing an order for the U.S. Marshal to take Tim Brown into custody, present him before the court, and hold him in custody until he delivers the items as ordered by the court to the Chapter 7 Trustee.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on, all creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2013. By the court's calculation, 31 days' notice was provided.

Tentative Ruling: The Motion to Impose Automatic Stay was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) or (f)(2).

The court's tentative decision is to deny the Motion to Impose the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

NOTICE

The Local Rules require that movant's notice of the hearing disclose whether or not written opposition to the motion is required. See Local Bankr. R. 9014-1(d)(3). The notice provided here did not so specify. This is improper. Failure to comply with the local rules is grounds to deny the motion. See Local Bankr. R. 9014-1(l).

MOTION

Furthermore, the pleading title motion is a combined motion and points and authorities in which the grounds upon which the motion is based are buried in detailed citations, quotations, legal arguments, and factual arguments (the pleading being a "Mothorities") in which the court and Plaintiff are put to the challenge of de-constructing the Mothorities, divining what are the actual grounds upon which the relief is requested (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007), restate those grounds, evaluate those grounds, consider those grounds in light of Fed. R. Bankr. P. 9011, and then rule on those grounds for the Defendant. The court has declined the opportunity to provide those services to a movant in other cases and adversary proceedings, and has required debtors, plaintiffs, defendants, and creditors to provide those services for the moving party.

The court has also observed that the more complex the Mothorities in which the grounds are hidden, the more likely it is that no proper grounds exist. Rather, the moving party is attempting to beguile the court and other party.

In such situations, the court routinely denies the motion without prejudice and without hearing. Law and motion practice in federal court, and especially in bankruptcy court, is not a treasure hunt process by which a moving party makes it unnecessarily difficult for the court and other parties to see and understand the particular grounds (the basic allegations)

upon which the relief is based. The court does not provide a differential application of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules as between creditors and debtors, plaintiff and defendants, or case and adversary proceedings. The rules are simple and uniformly applied.

DECLARATION

The declaration provided by Angela Gay Catarata states that she provides her testimony under penalty of perjury based only on "the best of my knowledge, information and belief." Dckt. 50. In substance, Debtor is stating "I hope the information is true and correct, and though I don't know, I'm informed by someone else and believe (because it lets me win) that what I've said above is true and correct."

The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides,

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

This does not provide for any qualification on stating that the information is true and correct, or let the witness provide a declaration based on information and belief. Stating that the information is true and correct, only to the extent that I actually know or believe it to be true, is not substantially in compliance with this section.

Movant has failed to provide the court with competent evidence of the obligation and Movant's interests. As such, the motion is denied without prejudice. FN.1.

 FN.1. Given that the proper form of the declaration is, and has long been specified by statute, and is one of the simplest things which counsel can do, there is no basis for continuing the hearing to allow the preparation of a new declaration. Movant can start over, finding a witness who can testify based on personal knowledge.

EXPIRATION OF TIME TO EXTEND STAY

The Motion seeks to have the court extend the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). The Debtor has filed three prior bankruptcy cases.

Case Number Chapter	Date Filed: Date Dismissed:	
13-22883 Chapter 11 Counsel	Date Filed: March 3, 2013 Date Dismissed: May 10, 2013	Case Dismissed pursuant to the Debtor's motion to dismiss. Order, 13-22883 Dckt. 64.
13-40475 Chapter 13 <i>Pro Se</i>	Date Filed: November 26, 2012 Date Dismissed: January 8, 2013	Case dismissed due to failure of Debtor to timely file Schedules and Statement of Financial Affairs.
12-34580 Chapter 7 <i>Pro Se</i>	Date Filed: August 9, 2012 Date Dismissed: August 27, 2012	Case dismissed due to failure of Debtor to timely file Schedules and Statement of Financial Affairs.

The present bankruptcy case was filed on June 6, 2013. The Debtor has had pending and dismissed three prior cases within the one-year period prior to the June 6, 2013 commencement of the present case.

As part of the 2005 BAPCA amendments, Congress created provisions for the termination of the automatic stay and for the stay not to go into effect in the subsequently filed case. First, 11 U.S.C. § 362(c)(3)(A) provides,

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;...

If the Debtor had only one case dismissed within the one-year period prior to the commencement of the present case, then the automatic stay would go into effect upon commencement of this case. However, the Debtor has had more than only one prior case which was pending and dismissed during the one-year period prior to the June 6, 2013 commencement of the present case. FN.2.

FN.2. If there had been only once prior case pending that was dismissed in the one-year period prior to the commencement of the present case, the Bankruptcy Code provides that the stay terminates on the 30th day, unless,

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

11 U.S.C. § 362(c)(3)(B). However, the hearing must be completed within 30-days of the commencement of the case. The present bankruptcy case having been filed on June 6, 2013, the hearing for relief requested under § 362(c)(3)(B) would have to have been completed by July 6, 2013. The hearing on the present motion having been set for August 6, 2013, the Debtor cannot comply with the time limits of § 362(c)(3)(B).

Congress has provided in 11 U.S.C. § 362(c)(4)(A) that if a debtor has had two or more cases which were pending and dismissed within one year of the commencement of a subsequent case, then the automatic stay does not go into effect upon the filing of the subsequent case.

(4) (A) (I) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) [11 USCS § 707(b)], the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

11 U.S.C. § 362(c)(4)(A). A debtor may seek to impose a stay pursuant,

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

11 U.S.C. § 362(c)(4)(B). However, the 30-day period has again expired, with the Debtor not filing the motion seeking relief to "impose a stay," whether pursuant to 11 U.S.C. § 362(c)(3)(B) or § 362(c)(4)(B), until the 31st day after the June 6, 2013 commencement of this bankruptcy case, and setting the hearing for 64 days after the commencement of the bankruptcy case.

The court denies the Motion, without prejudice to the Debtor seeking to impose a stay under applicable bankruptcy or non-bankruptcy law.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Impose the Automatic Stay filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, without prejudice to the Debtor seeking to impose a stay under applicable bankruptcy or non-bankruptcy law.

17. [13-27771-E-11](#) ANGELA CATARATA
BNF-1 Mark Lapham

CONTINUED MOTION TO CONFIRM
TERMINATION OR ABSENCE OF STAY
7-1-13 [[36](#)]

CONT. FROM 7-25-13

Local Rule 9014-1(f)(2) Motion - Continued Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 1st, 2013. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion and confirm the absence of the automatic stay in this bankruptcy case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

Seterus, Inc. seeks relief in the form of an order confirming that there is no automatic stay in effect with respect to the real property commonly known as 107 Roundtree Court, Sacramento, California. The moving party has provided the Declaration of Brandye Foreman to introduce evidence upon which it bases its claims.

DEBTOR'S INITIAL RESPONSE

Debtors respond that the service of process was defective as inadequate notice was given to Debtors. Debtors argue that any Motion for Relief from Automatic Stay, under Local Rule 4001-1, must be filed under Local Rule 9014(f)(1), and give 28 days notice. An examination of Creditor's Notice of Hearing [Dckt 37] shows that this motion was in fact filed under Local Rule 9014-1 (f)(2). Yet a closer reading of Local Rule 4004-1 reveals that it is comprised of two different sentences with two different meanings. Local Bankruptcy Rule 4004-1 simply states that Motions for Relief From

Automatic Stay "shall be set for hearing in accordance with LBR 9014-1." This includes both Local Bankruptcy Rule 9014-1 (f)(1) and (f)(2). As such, Debtor is incorrect in their characterization of the local rules and the Creditor did in fact provide correct notice.

STIPULATION

The parties filed a stipulation to continue the motion for relief to August 8, 2013. To correct the defect in the pleadings, if Movant desires to proceed with the present Motion and not voluntarily dismiss it, Movant shall file a supplement to the motion on or before August 5, 2013 which clearly states the grounds with particularity upon which relief is requested and a notice of continued hearing, setting the hearing for August 29, 2013, at 10:00 a.m. Fed. R. Bankr. P. 9013. Any points and authorities shall be set forth in a separate pleading. Local Bankruptcy Rule 9004-1(a) and the Revised Guideline for Preparation of Pleadings in this District. If the supplement and notice of continued hearing are not filed and served on or before August 5, 2013, then the court shall deny the present Motion without prejudice. Order, Dckt. 83.

SUPPLEMENTAL MOTION

The Movant filed a supplemental motion and supporting pleadings on August 5, 2013. Creditor argues that the automatic stay is not in effect in the present case based on Debtor's filing of three prior bankruptcy petitions, each of which was dismissed within 365 days of the filing of the current position.

The Debtor has filed three prior bankruptcy cases.

Case Number Chapter	Date Filed: Date Dismissed:	
13-22883 Chapter 11 Counsel	Date Filed: March 3, 2013 Date Dismissed: May 10, 2013	Case Dismissed pursuant to the Debtor's motion to dismiss. Order, 13-22883 Dckt. 64.
13-40475 Chapter 13 <i>Pro Se</i>	Date Filed: November 26, 2012 Date Dismissed: January 8, 2013	Case dismissed due to failure of Debtor to timely file Schedules and Statement of Financial Affairs.
12-34580 Chapter 7 <i>Pro Se</i>	Date Filed: August 9, 2012 Date Dismissed: August 27, 2012	Case dismissed due to failure of Debtor to timely file Schedules and Statement of Financial Affairs.

The present bankruptcy case was filed on June 6, 2013. The Debtor has had pending and dismissed three prior cases within the one-year period prior to the June 6, 2013 commencement of the present case.

As part of the 2005 BAPCA amendments, Congress created provisions for the termination of the automatic stay and for the stay not to go into effect in the subsequently filed case. First, 11 U.S.C. § 362(c)(3)(A) provides,

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;...

If the Debtor had only one case dismissed within the one-year period prior to the commencement of the present case, then the automatic stay would go into effect upon commencement of this case. However, the Debtor has had more than only one prior case which was pending and dismissed during the one-year period prior to the June 6, 2013 commencement of the present case. FN.1.

FN.1. If there had been only once prior case pending that was dismissed in the one-year period prior to the commencement of the present case, the Bankruptcy Code provides that the stay terminates on the 30th day, unless,

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

11 U.S.C. § 362(c)(3)(B). However, the hearing must be completed within 30-days of the commencement of the case. The present bankruptcy case having been filed on June 6, 2013, the hearing for relief requested under § 362(c)(3)(B) would have to have been completed by July 6, 2013. The hearing on the present motion having been set for August 6, 2013, the Debtor cannot comply with the time limits of § 362(c)(3)(B).

Congress has provided in 11 U.S.C. § 362(c)(4)(A) that if a debtor has had two or more cases which were pending and dismissed within one year of the commencement of a subsequent case, then the automatic stay does not go into effect upon the filing of the subsequent case.

(4) (A) (I) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other

than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) [11 USCS § 707(b)], the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

11 U.S.C. § 362(c)(4)(A).

Here, Debtor has had pending and dismissed three prior cases within the one-year period prior to the June 6, 2013 commencement of the present case. No order imposing the automatic stay in this case has been entered by the court.

Pursuant to 11 U.S.C. § 362(j) the court shall issue an order confirming that the automatic stay has not gone into effect in this case and that no order for the stay to take effect has been entered by the court in this case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm Termination or Absence of Stay is granted, and the court confirms that no automatic stay pursuant to 11 U.S.C. § 362(a) went into effect in the Debtor's instant bankruptcy case, Bankr. E.D. Cal. No. 13-27771, and that the court has not entered an order for the stay to go into effect in this case.

18. [10-23577-E-11](#) GLORIA FREEMAN
GMF-15 Pro Se

MOTION TO REMOVE FLEMMER AND
ASSOCIATES AS THE
CPA/ACCOUNTANT AND/OR MOTION TO
DISGORGE FLEMMER AND ASSOCIATES
FEES FOR THE ESTATE OF GLORIA
FREEMAN AND OTHER ENTITIES IN
THE EASTERN DISTRICT OF
CALIFORNIA, CHAPTER 11 CASE,
MOTION TO APPOINT JULIE HEATH
CPA
7-25-13 [[873](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Final Ruling: The Motion to Remove Flemmer and Associates was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's decision is to continue the hearing to 1:30 p.m. on August 13, 2013. No appearance at the August 8, 2013 hearing is required.

The court's tentative ruling is as follows:

Debtor filed a motion to remove Flemmer and Associates as the accountants for the Chapter 11 Trustee, to disgorge fees, and to appoint Julie Heath as the accountant for the Chapter 11 Trustee. The court summarizes the grounds stated with particularity in that motion as follows:

- A. The Chapter 11 Trustee has announced that he is terminating Flemmer and Associates as the accountants for the estate and will be employing other professionals.
- B. Flemmer and Associates has a connection with through one of its members with a business that competes with Ulrich, Nash and Gump (the ownership of which the Debtor, as Debtor in Possession, asserted was property of the bankruptcy estate).
- C. The Trustee has not completed all the required tax returns. (Reference is made as to the Trustee competing tax returns

for "various entities," however, the Trustee is just the trustee of the bankruptcy estate in this case and not for the "various entities.")

- D. The Debtor seeks to have the court order the trustee to engage the services of Ms. Julie Heath, CPA.

The Motion does not address the authority of the Debtor to seek an order from the court mandating the Trustee to hire a specific professional. Pursuant to Local Bankruptcy Rule 9014-1(d)(5), each motion, opposition and reply shall cite the legal authority relied upon by the filing party. Here, Debtor fails to provide the legal authority for the court to mandate the Trustee to hire a professional. This is grounds to deny the motion. Local Bankr. R. 1001-1(g).

Ms. Heath provides a Declaration in support of the Motion. Dckt. 876. In her declaration, Ms. Heath does not state what basis she has for joining in the motion to have the court order her to be employed by the Chapter 11 Trustee. Additionally, while Ms. Heath provides her opinion that the taxes for the estate of Gloria Freeman have not been properly filed as the community share allocation of income is required in each year of 2010, 2011, and 2012, Ms. Heath does not explain to the court what the error is, what information she has been provided in rendering her opinion, and what prior or current connections she has with either Gloria Freeman or Laurence Freeman.

The Heath Declaration is the only evidence in support of the Motion. The court does not have the requisite evidence to remove the CPA for the Trustee or disgorge any fees. Based on the foregoing, the court denies the Motion without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Remove Flemmer and Associates filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to 1:30 p.m. on August 13, 2013.