UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: November 19, 2019
CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

November 19, 2019 at 1:00 p.m.

1.	00-27002-B-13 SLP-1	ROSE PALMER Stacie L. Power	MOTION TO AVOID LIEN OF BUTTE COUNTY CREDIT BUREAU 10-9-19 [54]

Final Ruling

The motion has been set for hearing on 26 days' notice and is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). However, it appears that the Debtor did not serve Butte County Credit Bureau since the creditor does not appear on the certificate of service filed October 9, 2019, or the amended certificate of service filed October 24, 2019. *See* dkts. 56, 60. Therefore, the court's decision is to deny the motion without prejudice.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

2. 15-25308-B-13 LARRY PERKINS
RJ-4 Richard L. Jare

MOTION TO VALUE COLLATERAL OF ASPEN PROPERTIES GROUP, LLC
11-5-19 [93]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to deny the motion to value, issue an order to show cause why sanctions should not be ordered, and set a hearing on the court's order to show cause.

Debtor's motion to value the secured claim of Aspen Properties Group, LLC ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 773 Rolling Green Drive, West Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $560,000.00 as of the petition filing date. The Debtor's opinion of value is some evidence of value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor filed an opposition on November 14, 2019. Dkt. 99. Points raised in the opposition are well taken.

First, the Debtor has two active Chapter 13 cases: this one and case no. 19-25821 filed on September 17, 2019, currently pending before Chief Judge Ronald H. Sargis. The filing of two simultaneous Chapter 13 cases is indicative of bad faith conduct. *See In re Sorenson*, 575 B.R. 527, 532-33 (Bankr. D. Colo. 2017).

Second, the motion to value is untimely and substantively defective. Debtor's attorney is well aware that "[t]he hearing [on a motion to value] must be *concluded* before or in conjunction with the confirmation of the plan." Local Bankr. R. 3015-1(i) (emphasis added). The plan in this Chapter 13 case was confirmed over four years ago on August 24, 2015. Dkt. 25. Moreover, the motion to value satisfies none of the criteria for a post-discharge motion to value. The Debtor's confirmed plan did not call for treating Creditor's claim as wholly unsecured, Creditor's claim was not paid as an unsecured claim, and without clear notice that Creditor's lien was to be avoided through the plan it would be prejudicial to now treat Creditor's lien as avoided.[1] *Chagolla v. JP Morgan Chase Bank, N.A. (In re Chagolla)*, 544 B.R. 676, 681 (9th Cir. BAP 2016).

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[1] Debtor's argument that Creditor's claim was somehow subsumed in Class 7 as an unsecured claim is frivolous and sanctionable. Liens survive discharge unaffected, *Dewsnup v. Timm*, 502 U.S. 410, 418 (1992), which means in rem claims against a debtor's property remain after discharge. *Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991). In those instances when a lien may be avoided through a confirmed plan, the plan must provide "clear notice" to the affected creditor that its lien is or may be subject to avoidance. *See Shook v. CBIC (In re Shook)*, 278 B.R. 815, 824 (9th Cir. BAP 2002) (plan can effectively determine value and/or avoid a lien only if creditor receives "clear notice" that the plan will do so); *see also In re Hale*, 359 B.R. 310, 316 (Bankr. E.D. Wash. 2007); *In re Day*, 2019 WL 450673, *3 (Bankr. C.D. Cal. 2019) ("Because the Debtor provided no notice to OneWest regarding potential avoidance during the Plan proceedings, he is precluded from seeking avoidance of the Lien four years later. The Bankruptcy Court correctly found that res judicata prevented the Debtor from avoiding CIT's Lien."). The Debtor's plan does not provide the requisite clear notice that Creditor's lien is to be avoided or that Creditor is lumped into Class 7.

Given the general conduct of the Debtor and his attorney described above - and particularly the filing of what by all accounts appears to be a baseless, groundless, and frivolous motion to value - the court is inclined to **sanction the Debtor and his attorney, jointly and severally, $999.99** under Fed. R. Bankr. P. 9011, the court's local rules, and/or its inherent authority. Debtor and his attorney are therefore ordered to show cause, in writing filed by November 26, 2019 and with citations to relevant legal authorities, why they should not be so sanctioned. A hearing on the court's order to show cause is set for December 3, 2019, at 1:00 p.m.

The Debtor's motion to value is denied.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

3.	19-23308-B-13 DBL-1	JEFFERY/CHRISTINA JONES Bruce Charles Dwiggins	MOTION TO CONFIRM PLAN 10-12-19 [32]

No Ruling

4. 18-27211-B-13 ROBERT/KELLY ROCHA — MOTION TO INCUR DEBT
LBG-3 Lucas B. Garcia — 11-5-19 [53]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to grant the motion and authorize the Debtors to incur post-petition debt.

Debtors seek permission to purchase a used 2017 Nissan Altima, the total purchase price of which is $21,346.36, with monthly payments of $430.25 and an interest rate of 12.99% over 72 months. The Debtors acknowledge that while the interest rate is slightly higher and more lengthy than is typical, the Debtors' confirmed plan filed February 15, 2019, already pays 100% to all creditors.

The Declaration of Kelly Rocha has been filed in support of this motion. The Rocha Declaration states that the purchase of the Vehicle is necessary since Debtor's current 2002 Toyota Sequoia has over 200,000 miles, has become extremely unreliable, and is overly costly to restore to a dependable working condition.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, while the interest rate is higher and more lengthy than typical auto purchases, the Debtors did seek to purchase a used, rather than new, vehicle and are paying 100% of their creditors. The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

5.	18-23816-B-13 MET-2 **Thru #6**	LISA SLEDGE Mary Ellen Terranella	OBJECTION TO CONFIRMATION OF PLAN BY FREEDOM MORTGAGE CORPORATION 10-23-19 [93]

No Ruling

6.	18-23816-B-13 MET-2	LISA SLEDGE Mary Ellen Terranella	MOTION TO MODIFY PLAN 10-8-19 [85]

No Ruling

7.	19-23422-B-13	DANIEL ALTSTATT Pro Se	CONTINUED MOTION TO CONFIRM AMENDED PLAN 9-13-19 [73]

No Ruling

8. 18-21823-B-13 LETICIA COLLAZO MOTION TO REFINANCE
TOG-3 Thomas O. Gillis 11-5-19 [47]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to grant the motion.

Debtor seeks court approval to refinance real property commonly known as 1837 Marjorie Drive, Yuba City, California ("Property") with Mr. Cooper ("Creditor"), holder of the first deed of trust. Creditor has agreed to a refinance that will provide to the Debtor cash to close in the amount of $29,912.81. Debtor intends to use the proceeds to pay off approved unsecured creditors at 100% and discharge her Chapter 13 bankruptcy case. The Trustee estimates a pay off of approximately $12,992.84 to complete the plan.

The motion is supported by the Declaration of Leticia Collazo. The Declaration affirms Debtor's desire to refinance the Property. Debtor is a mother to five minor children ages 17, 12, 7, and 1-year-old twins and she is no longer working in order to stay home and care for her children. The Declaration states that the proceeds will pay off approved unsecured creditors and that remaining funds will be held in savings for any emergency that may arise with a family of seven.

The refinance does not appear to unduly jeopardize Debtor's performance of the plan filed July 2, 2018, and in fact completes plan payments and discharges the Chapter 13 bankruptcy. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion will be granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

9.	19-23035-B-13 BB-2	LILA SADAT Bonnie Baker	MOTION TO CONFIRM PLAN 10-15-19 [55]

No Ruling

10.	19-23949-B-13 UND-2	ERIC/REGINA FLEMING Ulric N. Duverney	MOTION TO CONFIRM PLAN 10-9-19 [48]

No Ruling

11.	19-24669-B-13 AF-5	RAMON CAPARAS Arasto Farsad	MOTION TO CONFIRM PLAN 9-18-19 [49]

No Ruling

12. 18-26272-B-13 PAULETTE PERFUMO MOTION TO INCUR DEBT
TBG-1 Stephan M. Brown 11-5-19 [56]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to deny the motion without prejudice.

The motion seeks permission to purchase a brand new 2020 Toyota Corolla LE, the total purchase price of which is $18,547.48, with monthly payments of $408.92 and an interest rate of 13.49% over 72 months. The Debtor states that she is current on plan payments and has the ability to fund the new car payments as shown in a proposed amended Schedule J, filed as Exhibit K at Docket 59. The Debtor's confirmed plan filed January 2, 2019, states that nonpriority unsecured claims will receive no less than a 41.10% dividend.

The Declaration of Paulette Perfumo has been filed in support of this motion. The Perfumo Declaration states that the purchase of the Vehicle is necessary since Debtor's current 2008 Cadillac DTS has approximately 130,000 miles, has cost Debtor $6,856.50 in repairs from June 2017 through May 2019, and needs additional extensive repairs that the Debtor is unable to afford. Debtor contends that it would be more economical to purchase a new motor vehicle than to continue trying to keep her present vehicle running and in good repair.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

While the court recognizes Debtor's need to purchase a different vehicle due to the costly repairs associated with her present Cadillac, the Debtor does not address the reasonableness of incurring debt to purchase a brand new vehicle at a substantial interest rate of 13.49% while seeking the extraordinary relief under Chapter 13 to discharge debts. Moreover, it is unclear to the court how in good faith the Debtor could propose to purchase a brand new vehicle while continuing to pay holders of unsecured claims 41.10%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a brand new vehicle and attempt to borrow money at a 13.49% interest rate.

The motion is denied without prejudice.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

13. 19-21876-B-13 SCOTT YODER
ETW-2 Richard L. Sturdevant

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-22-19 [64]

TROY WINSLOW VS.

Final Ruling

The motion has been set for hearing on the 28-days 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)(B) 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 non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion for relief from stay.

Troy Winslow ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 2280 Clearview Circle, Benicia, California (the "Property"). Movant has provided the Declaration of Troy S. Winslow to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Winslow Declaration states that the loan became due and payable on December 1, 2018, and that the Debtor has not made any payments on the loan since filing the petition on March 27, 2019.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $314,072.90 as stated in the Winslow Declaration. The value of the Property is determined to be $360,000.00 as stated in Schedules A/B and D filed by Debtor.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, while an equity cushion does exist based on the Property's value as provided in Schedule A/B[1], it is not sufficient adequate protection. The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Creditor claims it is owed $314,072.90. Based on the Property's $360,000.00 value, that leaves equity of $45,927.10, which in turn creates an equity cushion of 12.756%. Creditor is therefore not adequately protected.

[1]Schedules are filed under penalty of perjury. *See* Fed. R. Bankr. P. 1008. Some courts treat schedules as evidentiary admissions under Federal Rule of Evidence 801(d)(2). *Heath v. American Express Travel Related Services Co., Inc. (In re Heath)*, 331 B.R. 424, 431 (9th Cir. BAP 2005). Others treat them as judicial admissions. *In re Roots Rents, Inc.*, 420 B.R. 28, 40 (Bankr. D. Utah). Whatever their status, schedules carry evidentiary weight. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969-70 (9th Cir. 2012).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

14.	14-28177-B-13 PGM-1	PAUL/LEE BOULOS Peter G. Macaluso	MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC 10-22-19 [42]

Tentative Ruling

Because 27 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Portfolio Recovery Associates, LLC ("Creditor") against the Debtors' property commonly known as 1175 Silver Spur Way, Plumas Lake, California ("Property").

A judgment was entered against Debtor Paul Boulos in favor of Creditor in the amount of $3,019.12. An abstract of judgment was recorded with Yuba County on June 3, 2014, which encumbers the Property. All other liens recorded against the Property total $252,497.11.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $221,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

15. 19-26277-B-13 MMN-1 | JUAN MONGALO AND MILAGROS MONGALO ROBLETO
Michael M. Noble | MOTION TO VALUE COLLATERAL OF BANK OF STOCKTON
10-30-19 [18]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to deny the motion to value the secured claim of Bank of Stockton.

Debtors' motion to value the secured claim of Bank of Stockton. ("Creditor") is accompanied by Debtor Juan Mongalo's declaration. Debtors are the owner of a 2017 Toyota Camry ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $12,000.00 as of the petition filing date. This value is derived from a Kelley Blue Book value of $16,000.00 minus $4,000.00 in reported repair costs. The Debtors' schedules had listed the Vehicle at a value of $14,000.00 because they had under-estimated the cost of repairs. As the owners, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that amended Claim No. 6-2 filed by Bank of Stockton is the claim which may be the subject of the present motion.

Response

Although the Creditor has not filed any opposition, a response was filed by the Chapter 13 Trustee. The Trustee requests that the court consider the fact that the Debtors did not provide evidence of the reported repair costs of $4,000.00, that there is the possibility that insurance may cover the Vehicle's damage, and that the Creditor filed an amended claim on November 1, 2019.

Discussion

The court finds issue with the Debtors' valuation. The declaration states that the valuation of the Vehicle is based on a Kelley Blue Book printout but this is a third party industry source and, therefore, Debtors' opinion of value is based on hearsay. Fed R. Evid. 801-803; *see also In re Guerra*, 2008 WL 3200931, *2 n.4 (Bankr. E.D. Cal. 2008) ("Filed with Guerra's declaration was an unauthenticated document titled: 'Edmonds.com True Market Value Pricing Report.' The court has not considered this attachment in that it is inadmissible hearsay[.]").

Additionally, there is no indication of whether Debtors provided a retail valuation taking into account the condition of the car. *See* 11 U.S.C. § 506(a). In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2).

The Debtors have not persuaded the court regarding their position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

16. 19-24685-B-13 TBG-3 — EMILIA ARDELEAN, Daniel J. Griffin — MOTION TO AVOID LIEN OF CARMELITA MANCIA, 10-21-19 [45]

Final Ruling

The motion has been set for hearing on the 28-days 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)(B) 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 non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Carmelita Mancia ("Creditor") against the Debtor's property commonly known as 6035 Glenbrook Lane, Carmichael, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $21,555.97. An abstract of judgment was recorded with Sacramento County on June 5, 2019, which encumbers the Property. All other liens recorded against the Property total $407,547.16.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $446,736.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $41,342.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

17. 17-23289-B-13 CONCETTA MANZANO
Eric John Schwab

TRUSTEE'S REPORT AND ACCOUNT
9-28-19 [38]

No Ruling

18. 18-20390-B-13 PLC-2 — THOMAS/SAMMY BOONE — Peter L. Cianchetta — MOTION TO SUBSTITUTE PARTY, AS TO DEBTOR AND/OR NOTICE OF DEATH OF A DEBTOR — 10-15-19 [39]

Final Ruling

The motion has been set for hearing on the 28-days 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)(B) 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 non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to substitute Joint Debtor Sammy Boone to continue administration of the case.

Joint Debtor Sammy Boone gives notice of the death of her husband Debtor Thomas Boone and requests the court to substitute Sammy Boone in place of Thomas Boone for all purposes within this Chapter 13 proceeding.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

> 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [FED. R. CIV. P. 25(a), (b); FED. R. BANKR. P. 1004.1 & 7025];
>
> 2) Continued administration of a case under chapter 11, 12, or 13 [FED. R. BANKR. P. 1016];
>
> 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
>
> 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Sammy Boone for Thomas Boone as successor-in-interest. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.