

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 26, 2013 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order."

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.
3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	13-29402-D-13 TBK-2	RAMSEY/AMEL MOHAMED	CONTINUED MOTION TO AVOID LIEN OF COLLECTRONICS, INC. 8-19-13 [20]
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2.	08-34804-D-13 JDP-1	CALVIN/RENEE KEE	MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A. 10-3-13 [105]
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Final ruling:
The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of JP Morgan Chase Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of JP Morgan Chase Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

3. 12-41912-D-13 MARTHA RODRIGUEZ MOTION TO MODIFY PLAN
JTN-1 9-25-13 [31]

4. 13-28714-D-13 JOHN/CONNIE PERRY MOTION TO CONFIRM PLAN
TCB-4 10-3-13 [39]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

5. 13-20719-D-13 VICTOR/DAWN ALEJANDRE MOTION TO INCUR DEBT
TBK-1 10-30-13 [40]

6. 13-29922-D-13 NORMAN/PANDORA BURTON MOTION TO VALUE COLLATERAL OF
PGM-2 WELLS FARGO BANK, N.A.
10-16-13 [17]

Tentative ruling:

This is the debtors' motion to value their 2003 Acura RL-V6 (the "vehicle") pursuant to § 506(a) of the Bankruptcy Code. The vehicle is collateral for a loan owed by the debtors to Wells Fargo Bank (the "Bank"), which opposes the motion. For the reasons stated below, the court will grant the motion and value the vehicle at \$3,000.

In support of the motion, the debtors filed their own declaration, in which they state they have formed their opinion of value based on their own rationale and perception, and on their review of local newspapers and trade articles, and websites such as Kelley Blue Book and NADA.¹ The debtors add that the vehicle is in fair condition, with approximately 200,000 miles on it, and they itemize broken and

damaged items on the vehicle. They state that the cost of the necessary repairs would be between \$2,000 and \$3,500, and conclude that in their opinion, the retail value of the vehicle is \$3,000. In response, the Bank has submitted a printout from the NADA Official Used Car Guide, accompanied by a declaration of a Bankruptcy Specialist for the Bank, who testifies it has been the Bank's experience that the NADA "accurately estimates the value of used motor vehicles." Declaration of Magali Escamilla, filed Nov. 7, 2013, at 3:7-8. Thus, the Bank concludes the value of the vehicle should be determined to be \$7,150, which is the NADA's "clean retail" value for a vehicle of the same model, age, and mileage as the debtors'.

The standard the court is to use to value personal property acquired for personal, family, or household purposes is the property's "replacement value" as of the petition date, without deduction for costs of sale or marketing, § 506(a)(2); "replacement value," in turn, is defined as "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." Id. Here, the debtors did not use the term "replacement value," and have not referred to the price a retail merchant would charge for a similar vehicle, which would have been preferable. However, they have testified to their opinion of the "retail value" of the vehicle, which constitutes some evidence. The Bank has also submitted some evidence; however, the Bank's is not specific to the debtors' vehicle, which is, after all, the vehicle the court is to value. The Bank's approach would effectively write the "condition" of the property out of the definition of "replacement value."

As the Bank's evidence of value does not account for the nuances of the debtors' particular vehicle, whereas the debtors' evidence does, the court gives more weight to the debtors' evidence. As such, the court will grant the motion and set the value of the Bank's secured claim at \$3,000.

The court will hear the matter.

1 The debtors state they have attached to their declaration "a true and correct copy of publication/valuation." Debtors' declaration, filed Oct. 3, 2013, at 2:2-3. There is a single page attached, which appears to be a partial printout from the Kelley Blue Book website assessing a private party value for a 2003 Acura RL in excellent condition. As the private party value is not the standard the court is to use in valuing the vehicle (see § 506(a)(2)), the attachment and the debtors' reliance on it are not helpful.

7. 13-26925-D-13 JOSE CHAVEZ AND ESTHER MOTION TO CONFIRM PLAN
DVD-5 FRANCO DE CHAVEZ 10-22-13 [93]

Final ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties gave only 35 days' notice of the hearing, rather than 42 days', as required by LBR 3015-1(d)(1) and applicable rules; and (2) as indicated by the trustee, the debtors signed two different chapter 13 plans on October 21, 2013 - one entitled second modified

chapter 13 plan and the other entitled simply chapter 13 plan; the latter was filed as part of the same document as the former (see DN 97). The court cannot determine which of the plans was served on creditors, and the trustee is not sure which plan to administer. The debtors' reply, in which their attorney states, not under oath, that the plan served on the parties was in fact the second modified plan, does not solve the problem.

As a result of this notice defect, and because the record does not demonstrate conclusively which of the two plans was served on creditors, the motion will be denied by minute order. No appearance is necessary.

8. 13-26925-D-13 JOSE CHAVEZ AND ESTHER MOTION TO VALUE COLLATERAL OF
DVD-6 FRANCO DE CHAVEZ JP MORGAN CHASE BANK, N.A.
10-22-13 [99]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of JP Morgan Chase Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of JP Morgan Chase Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

9. 13-26925-D-13 JOSE CHAVEZ AND ESTHER MOTION TO VALUE COLLATERAL OF
DVD-7 FRANCO DE CHAVEZ JP MORGAN CHASE BANK, N.A.
10-22-13 [103]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of JP Morgan Chase Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of JP Morgan Chase Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

10. 12-40727-D-13 KENN CHIONG AND VERA MOTION TO MODIFY PLAN
JCK-2 BONPUA-CHIONG 10-17-13 [37]

Tentative ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The trustee has filed opposition, and the debtors have filed a reply. For the following reasons, the motion will be denied.

The debtors, who are just one year into a 60-month plan, propose to reduce their plan payment from \$4,700 to \$4,267 per month, and the dividend to unsecured creditors from 47% to 37.8%, because their income has been reduced. The trustee contends, first, that the plan is not proposed in good faith because the debtors

continue to contribute \$271 per month to a voluntary retirement account, which the trustee believes is not reasonable or necessary, especially in light of the proposed reduced dividend. The debtors' reply is two-fold. First, they were contributing \$542 when the case was commenced, but reduced the contribution by half at the trustee's request. They believe this was a reasonable compromise, and they should not have to eliminate the contribution. Second, they believe it is important to plan for their retirement. Of course, the latter is probably true for all debtors. However, this court follows Parks v. Drummond (In re Parks), 475 B.R. 703, 709 (9th Cir. 2012), and thus, agrees with the trustee on this point. The court notes that the debtors in this case are significantly above-median income; their current monthly income, as set forth on their Form 22C, was almost double the median family income for a household of five. Both debtors apparently have steady income and employment prospects - both have been probation officers for San Joaquin County for 11 years. There appears to be no reason particular to their circumstances that they must continue contributing to a voluntary retirement account, contrary to Parks.

Second, the trustee objected that he had insufficient documentation to assess the debtors' proposal to pay \$125 per month toward their 2012 tax debt. The debtors' reply indicates they have provided copies of their 2012 tax returns to the trustee. In any event, however, the court need not reach the issue at this time because the motion will be denied for the reason discussed above - that in light of their voluntary retirement contribution, despite the significant reduction in the dividend to unsecured creditors just one year into the plan, the debtors have failed to meet their burden of demonstrating that the plan has been proposed in good faith.

The court will hear the matter.

11. 12-28729-D-13 JOAO/GRACIELA FERNANDES MOTION TO APPROVE LOAN
PD-2 MODIFICATION
10-21-13 [42]

12. 13-21234-D-13 JOHN/CYNTHIA GIFFORD MOTION TO SUBSTITUTE PARTY
PGM-3 10-22-13 [91]

Final ruling:

This is the motion of joint debtor Cynthia L. Gifford (the "debtor") to substitute herself in this bankruptcy case as successor to debtor John J. Gifford, who died August 18, 2013 (after this case was commenced). The motion was brought pursuant to Fed. R. Civ. P. 25(a) ("Rule 25(a)"), incorporated herein by Fed. R. Bankr. P. 7025. The debtor also seeks a determination that further administration of this chapter 13 case is possible and in the best interest of the parties; thus, she seeks permission to proceed with the case as though the death of debtor John J. Gifford had not occurred. Such relief is permissible pursuant to Fed. R. Bankr. P. 1016.

In support of the motion, the debtor cites her receipt of life insurance proceeds on account of the death of John J. Gifford, which she states are sufficient to provide her with ongoing income. In support of the motion, the debtor has filed a declaration which she states is intended to serve as an affidavit under Cal. Prob. Code § 13100. That section is part of Division 8 of the Probate Code dealing with the disposition of an estate without probate. Section 13100 deals with the ability of decedent's successor to collect money due the decedent, to receive tangible personal property of the decedent, and to have property that is evidence of debt belonging to the decedent transferred. The section does not address the right of a decedent's successor to proceed with a pending action as successor to the decedent, which is essentially what the debtor is asking to do.

Rule 25(a) provides that the court may order substitution of the "proper party," which is generally taken to mean "the person who has the legal right and authority to pursue the claims brought by the deceased party or to defend against the claims brought against the deceased party." 6 Moore's Federal Practice, § 25.12[3] (Matthew Bender 3d ed.). Whether a person is a "proper party," for purposes of Rule 25(a), is a substantive question determined according to state law. Id. Under California law, the court shall allow an action commenced by a person who later dies to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest. Cal. Code Civ. Proc. § 377.31. For this purpose, "decedent's successor in interest" means "the beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action." Cal. Code Civ. Proc. § 377.11. The person who seeks to continue a pending action as the decedent's successor in interest must file an affidavit or declaration under penalty of perjury under the laws of the State of California, that contains several specific statements required by statute. See Cal. Code Civ. Proc. § 377.32(a). Some of the required statements are included in the debtor's declaration (the one she states represents her compliance with Cal. Prob. Code § 13100); however, others are not.

The court will continue the hearing to December 10, 2013 at 10:00 a.m. to allow the debtor to file a declaration setting forth all the statements required by § 377.32(a). The debtor will also be required to serve the motion and a notice of continued hearing (which shall be a notice pursuant to LBR 9014-1(f)(2) (no written opposition required)) on any other successors or representatives of the deceased party, John J. Gifford, pursuant to Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Civ. 25(a)(3). See Moore's, § 25.12[2]. If there are no other successors or representatives of the decedent, the debtor should so indicate in her declaration.

Finally, the court notes that the moving party served the wrong chapter 13 trustee; she will be required to serve the motion and notice of continued hearing on the chapter 13 trustee in this case. The notice of continued hearing must be filed, and the motion and notice of continued hearing must be served on other successors or representatives of the decedent, if any, and on the chapter 13 trustee no later than November 26, 2013. The debtor's supplemental declaration may be filed no later than December 3, 2013.

The hearing will be continued by minute order. No appearance is necessary on November 26, 2013.

13. 13-29736-D-13 ERIN POTTER MOTION TO VALUE COLLATERAL OF
JM-1 INTERNAL REVENUE SERVICE
9-26-13 [31]

Final ruling:

This is the debtor's motion to value collateral of the Internal Revenue Service (the "IRS"). The motion will be denied because the moving party served the IRS at only two of the three addresses at which the IRS is required to be served in contested matters, as listed on the Roster of Governmental Agencies, as required by LBR 2002-1(c). As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

14. 13-29736-D-13 ERIN POTTER MOTION TO CONFIRM PLAN
JM-2 9-26-13 [22]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party served only the motion, notice of hearing, and supporting declaration, and not the plan itself, as required by LBR 3015-1(d)(1); (2) the moving party failed to serve Vermont Student Assistance Corp., added to her Schedule F by amendment filed September 26, 2013 on account of a claim for \$20,672, at all; and (3) the plan fails to provide for the filed priority claim of the Internal Revenue Service, in the amount of \$28,423.21, at all; thus, the plan fails to comply with § 1322(a)(2) of the Bankruptcy Code.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

15. 13-31936-D-13 KATHI GARDNER OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
11-1-13 [15]

16. 10-50037-D-13 ANTHONY/EVELIA ADAMS MOTION FOR RELIEF FROM
RDW-1 AUTOMATIC STAY AND/OR MOTION
PATELCO CREDIT UNION VS. FOR ADEQUATE PROTECTION
10-23-13 [53]

Final ruling:

This matter is resolved without oral argument. This is Patelco Credit Union's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtors are not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. Accordingly, the court will grant relief from stay by minute order. As the debtors are not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

17. 13-32841-D-13 CHARLES EVINS MOTION TO VALUE COLLATERAL OF
RWF-1 BDM MORTGAGE SERVICES, INC.
10-29-13 [15]

Final ruling:

This matter has been continued by stipulation of the parties to December 10, 2013, at 10:00 a.m. No appearance is necessary on November 26, 2013.

18. 13-32841-D-13 CHARLES EVINS MOTION TO VALUE COLLATERAL OF
RWF-2 SANTANDER CONSUMER USA
10-29-13 [19]

Final ruling:

This is the debtor's motion to value collateral of Santander Consumer USA ("Santander"). The motion will be denied for the following reasons: (1) the proof of service does not indicate the date of service; and (2) the moving party failed to serve Santander in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Santander (1) by certified mail to the attention of a managing officer; and (2) by certified mail through its agent for service of process. Both methods were insufficient because service was made by certified mail, whereas service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be by first-class mail. This distinction is important. Rule 7004(h), which governs service on an FDIC-insured institution, requires service by certified mail, whereas service on a corporation, partnership, or other unincorporated association must be by first-class mail. See preamble to Rule 7004(b). If service on a corporation, partnership, or other unincorporated association by certified mail were appropriate, the distinction in the manner of service, as between Rule 7004(h) and Rule 7004(b)(3), would be superfluous.

As a result of these service defects, the motion will be denied by minute order. No appearance is necessary.

19. 13-32841-D-13 CHARLES EVINS MOTION TO VALUE COLLATERAL OF
RWF-3 WELLS FARGO BANK, N.A.
10-29-13 [23]

Tentative ruling:

This is the debtor's motion to value his 2005 Cadillac DeVille (the "vehicle") pursuant to § 506(a) of the Bankruptcy Code. The vehicle is collateral for a loan owed by the debtor to Wells Fargo Bank (the "Bank"), which opposes the motion. For the reasons stated below, the court will deny the motion.

In support of the motion, the debtor filed his own declaration, in which he states that the vehicle has approximately 250,000 miles on it and is in "less than fair condition" (Debtor's declaration, filed Oct. 29, 2013, at 1:21); his opinion of the value of the vehicle as of the petition date is \$2,207. In response, the Bank has submitted a printout from the NADA Official Used Car Guide, accompanied by a declaration of a Bankruptcy Specialist for the Bank, who testifies it has been the Bank's experience that the NADA "accurately estimates the value of used motor

vehicles." Declaration of Michelle Morris, filed Nov. 13, 2013, at 3:8-9. Thus, the Bank concludes the value of the vehicle should be determined to be \$6,070, which is the NADA's "clean retail" value for a vehicle of the same model, age, and mileage as the debtor's.

The standard the court is to use to value personal property acquired for personal, family, or household purposes is the property's "replacement value" as of the petition date, without deduction for costs of sale or marketing, § 506(a)(2); "replacement value," in turn, is defined as "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." Id. Here, the debtor has offered his opinion only as to the "value" of the vehicle, a term that can have numerous meanings. The court has no way of knowing whether the debtor is testifying to the vehicle's "replacement value" or some other value, such as trade-in value, loan value, or private party value. In other words, the debtor has submitted no evidence of the replacement value of the vehicle, and thus, has not met his burden as the moving party to demonstrate the amount at which the Bank's secured claim should be allowed. The Bank, on the other hand, has submitted evidence from a well-recognized and reputable source for vehicle pricing and information, of which the court may take judicial notice. See Fed. R. Evid. 201(b)(2) ("The court may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."). However, the court is not prepared to find, as the Bank requests, that the value of the vehicle is \$6,070, because the Bank's evidence is not specific to the debtor's vehicle; that is, the court cannot determine from the Bank's evidence the replacement value of the vehicle given its condition, as required by the Code.

As the only evidence the debtor has offered does not support a finding as to the replacement value of the vehicle, the court will deny the motion. The court will hear the matter.

20. 13-32841-D-13 CHARLES EVINS MOTION TO VALUE COLLATERAL OF
RWF-4 BDM MORTGAGE SERVICES, INC.
10-29-13 [27]

Final ruling:

This matter has been continued by stipulation of the parties to December 10, 2013, at 10:00 a.m. No appearance is necessary on November 26, 2013.

21. 13-24047-D-13 EDMUNDO/MARIA MOLINA MOTION TO CONFIRM PLAN
MDL-8 10-1-13 [106]

22. 10-44449-D-13 DARRYL/PAMELA BANNISTER MOTION TO VALUE COLLATERAL OF
JDP-1 U.S. BANK, N.A.
10-9-13 [38]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of U.S. Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of U.S. Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

23. 11-28954-D-13 THEODORE/CHERYL BELL MOTION TO MODIFY PLAN
CJY-1 10-17-13 [38]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

24. 13-32456-D-13 GEORGE LITTLEJOHN MOTION TO VALUE COLLATERAL OF
JM-1 CITIMORTGAGE
9-26-13 [9]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Citimortgage at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Citimortgage's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

25. 13-26259-D-13 JAGROOP SINGH MOTION TO AVOID LIEN OF CHASE
BANK USA, N.A.
10-16-13 [73]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Chase Bank USA, N.A. (the "Bank"). The motion will be denied for the following reasons. First, the moving papers do not include a docket control number, as required by LBR 9014-1(c). Second, the notice of hearing does not comply with local rules regarding the filing of opposition. The notice recites those portions of LBR 9014-1 regarding the manner of and time for filing motions and applications, which may be confusing to parties interested in responding to the motion, rather than bringing a motion. Further,

although the notice recites the language of LBR 9014-1(f) (1) (B) regarding the time for filing opposition, it does not include the cautionary language required by LBR 9014-1(d) (3). Finally, the notice states that the initial hearing will not be an evidentiary hearing, but will serve as a status conference at which the court may schedule an evidentiary hearing as necessary. This language may be interpreted as conflicting with the requirements that, where a motion is brought pursuant to LBR 9014-1(f) (1), the moving party and the responding party are required to submit their evidence with the motion and opposition, respectively; that is, prior to the initial hearing. See LBR 9014-1(d) (6) and (f) (1) (B).

Next, the debtor's exhibits supporting the motion do not comply with the format required by the court's Revised Guidelines for the Preparation of Documents, Form EDC 2-901, as required by LBR 9004-1(a). The exhibits are not filed under cover of an index page with the caption and hearing information, as required by Guideline 6(b).

Further, although the exhibits are authenticated by the debtor's declaration, they do not constitute admissible evidence sufficient to demonstrate that the debtor is entitled to the relief requested, as required by LBR 9014-1(d) (6). "There are four basic elements of an avoidable lien under § 522(f) (1) (A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f) (1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added).

Since there must be a judicial lien for the court to avoid under § 522(f) (1) (A), the moving party must demonstrate that one actually exists. The motion states that the debtor's property is encumbered by an abstract of judgment recorded by the Bank; the motion gives the alleged amount of the judgment and the apparent recording date of the abstract of judgment. The debtor's declaration states that Exhibit B to the motion is the abstract of judgment filed against him. Exhibit B, however, is not a copy of the abstract; it is a printout from the website of the San Joaquin County Recorder's office purporting to list a variety of judgments against various debtors, including the debtor in this case, by the Bank.¹ In short, the debtor's assertion that his property is encumbered by a lien held by the Bank in a particular amount is hearsay, and the debtor has not met the requirements for avoiding a judicial lien under 11 U.S.C. § 522(f) (1) (A). (The debtor's Exhibit A is a copy of the court docket in the Bank's lawsuit against him. There is no copy of the recorded abstract of judgment on file.)

Finally, the moving papers, together with the debtor's schedules filed in this case, of which the court takes judicial notice, do not demonstrate that the debtor is entitled to the relief requested. The debtor's declaration states that he requests the court to remove the lien "so that [he] may use [his] full \$100,000.00 homestead exemption." Declaration of Jagroop Singh, filed Oct. 16, 2013, ¶ 6. However, the debtor has not claimed an exemption of \$100,000 in the property; he has claimed an exemption of only \$18,231. Thus, he has not demonstrated that he is entitled to an exemption of \$100,000. Given the debtor's claim of exemption of \$18,231 in value in the property, and given the amounts of the non-avoidable liens against the property and the debtor's alleged value of the property, the Bank's judgment lien does not impair the debtor's exemption.

As a result of these notice, evidentiary, and other procedural defects, and

because as the record stands, the debtor is not entitled to the relief requested, the motion will be denied by minute order. No appearance is necessary.

1 Without a copy of the abstract of judgment, the court cannot verify the amount of the lien, cannot confirm that it attached to the debtor's property and when, and cannot determine whether it also attaches to the interest of a non-filing individual, such as, for example, the debtor's spouse. The best evidence as to all these issues would be a copy of the recorded abstract of judgment.

26. 13-26259-D-13 JAGROOP SINGH

MOTION TO AVOID LIEN OF
CITIBANK, N.A.
10-16-13 [79]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Citibank, N.A. (the "Bank"). The motion will be denied for the following reasons. First, the moving papers do not include a docket control number, as required by LBR 9014-1(c). Second, the notice of hearing does not comply with local rules regarding the filing of opposition. The notice recites those portions of LBR 9014-1 regarding the manner of and time for filing motions and applications, which may be confusing to parties interested in responding to the motion, rather than bringing a motion. Further, although the notice recites the language of LBR 9014-1(f)(1)(B) regarding the time for filing opposition, it does not include the cautionary language required by LBR 9014-1(d)(3). Finally, the notice states that the initial hearing will not be an evidentiary hearing, but will serve as a status conference at which the court may schedule an evidentiary hearing as necessary. This language may be interpreted as conflicting with the requirements that, where a motion is brought pursuant to LBR 9014-1(f)(1), the moving party and the responding party are required to submit their evidence with the motion and opposition, respectively; that is, prior to the initial hearing. See LBR 9014-1(d)(6) and (f)(1)(B).

Next, the debtor's exhibits supporting the motion do not comply with the format required by the court's Revised Guidelines for the Preparation of Documents, Form EDC 2-901, as required by LBR 9004-1(a). The exhibits are not filed under cover of an index page with the caption and hearing information, as required by Guideline 6(b).

Further, although the exhibits are authenticated by the debtor's declaration, they do not constitute admissible evidence sufficient to demonstrate that the debtor is entitled to the relief requested, as required by LBR 9014-1(d)(6). "There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added).

Since there must be a judicial lien for the court to avoid under § 522(f)(1)(A), the moving party must demonstrate that one actually exists. The motion states that the debtor's property is encumbered by an abstract of judgment recorded by the Bank; the motion gives the alleged amount of the judgment and the apparent recording date of the abstract of judgment. The debtor's declaration

states that Exhibit B to the motion is the abstract of judgment filed against him. Exhibit B, however, is not a copy of the abstract; it is a printout from the website of the San Joaquin County Recorder's office purporting to list three judgments against the debtor.¹ In short, the debtor's assertion that his property is encumbered by a lien held by the Bank in a particular amount is hearsay, and the debtor has not met the requirements for avoiding a judicial lien under 11 U.S.C. § 522(f)(1)(A). (The debtor's Exhibit A is a copy of the court docket in the Bank's lawsuit against him. There is no copy of the recorded abstract of judgment on file.)

Finally, the moving papers, together with the debtor's schedules filed in this case, of which the court takes judicial notice, do not demonstrate that the debtor is entitled to the relief requested. The debtor's declaration states that he requests the court to remove the lien "so that [he] may use [his] full \$100,000.00 homestead exemption." Declaration of Jagroop Singh, filed Oct. 16, 2013, ¶ 6. However, the debtor has not claimed an exemption of \$100,000 in the property; he has claimed an exemption of only \$18,231. Thus, he has not demonstrated that he is entitled to an exemption of \$100,000. Given the debtor's claim of exemption of \$18,231 in value in the property, and given the amounts of the non-avoidable liens against the property and the debtor's alleged value of the property, the Bank's judgment lien does not impair the debtor's exemption.

As a result of these notice, evidentiary, and other procedural defects, and because as the record stands, the debtor is not entitled to the relief requested, the motion will be denied by minute order. No appearance is necessary.

1 Without a copy of the abstract of judgment, the court cannot verify the amount of the lien, cannot confirm that it attached to the debtor's property and when, and cannot determine whether it also attaches to the interest of a non-filing individual, such as, for example, the debtor's spouse. The best evidence as to all these issues would be a copy of the recorded abstract of judgment.

27. 13-26259-D-13 JAGROOP SINGH

MOTION TO AVOID LIEN OF HSBC
BANK NEVADA, N.A.
10-16-13 [85]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by HSBC Bank Nevada, N.A. (the "Bank"). The motion will be denied for the same reasons as the debtor's motions to avoid liens held by Chase Bank USA, N.A., and Citibank, N.A., also on this calendar. However, counsel is cautioned that there is an additional basis on which this motion against HSBC Bank Nevada, N.A. will be denied, which will be discussed at the end of this ruling. The motion will be denied for the following reasons. First, the moving papers do not include a docket control number, as required by LBR 9014-1(c). Second, the notice of hearing does not comply with local rules regarding the filing of opposition. The notice recites those portions of LBR 9014-1 regarding the manner of and time for filing motions and applications, which may be confusing to parties interested in responding to the motion, rather than bringing a motion. Further, although the notice recites the language of LBR 9014-1(f)(1)(B) regarding the time for filing opposition, it does not include the cautionary language required by LBR 9014-1(d)(3). Finally, the notice states that the initial hearing will not be an evidentiary hearing, but will serve as a status conference at which the court may schedule an evidentiary hearing as necessary.

This language may be interpreted as conflicting with the requirements that, where a motion is brought pursuant to LBR 9014-1(f) (1), the moving party and the responding party are required to submit their evidence with the motion and opposition, respectively; that is, prior to the initial hearing. See LBR 9014-1(d) (6) and (f) (1) (B) .

Next, the debtor's exhibits supporting the motion do not comply with the format required by the court's Revised Guidelines for the Preparation of Documents, Form EDC 2-901, as required by LBR 9004-1(a). The exhibits are not filed under cover of an index page with the caption and hearing information, as required by Guideline 6(b) .

Further, although the exhibits are authenticated by the debtor's declaration, they do not constitute admissible evidence sufficient to demonstrate that the debtor is entitled to the relief requested, as required by LBR 9014-1(d) (6) . "There are four basic elements of an avoidable lien under § 522(f) (1) (A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f) . Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f) (1) ."
In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added) .

Since there must be a judicial lien for the court to avoid under § 522(f) (1) (A), the moving party must demonstrate that one actually exists. The motion states that the debtor's property is encumbered by an abstract of judgment recorded by the Bank; the motion gives the alleged amount of the judgment and the apparent recording date of the abstract of judgment. The debtor's declaration states that Exhibit B to the motion is the abstract of judgment filed against him. Exhibit B, however, is not a copy of the abstract; it is a printout from the website of the San Joaquin County Recorder's office purporting to list three judgments against the debtor.¹ In short, the debtor's assertion that his property is encumbered by a lien held by the Bank in a particular amount is hearsay, and the debtor has not met the requirements for avoiding a judicial lien under 11 U.S.C. § 522(f) (1) (A) . (The debtor's Exhibit A is a copy of the court docket in the Bank's lawsuit against him. There is no copy of the recorded abstract of judgment on file.)

Next, the moving papers, together with the debtor's schedules filed in this case, of which the court takes judicial notice, do not demonstrate that the debtor is entitled to the relief requested. The debtor's declaration states that he requests the court to remove the lien "so that [he] may use [his] full \$100,000.00 homestead exemption." Declaration of Jagroop Singh, filed Oct. 16, 2013, ¶ 6. However, the debtor has not claimed an exemption of \$100,000 in the property; he has claimed an exemption of only \$18,231. Thus, he has not demonstrated that he is entitled to an exemption of \$100,000. Given the debtor's claim of exemption of \$18,231 in value in the property, and given the amounts of the non-avoidable liens against the property and the debtor's alleged value of the property, the Bank's judgment lien does not impair the debtor's exemption.

Finally, the motion is against HSBC Bank Nevada, N.A.; however, the moving party did not serve that entity. Instead, the moving party served HSBC Bank USA, N.A., which the FDIC's website indicates is a different institution.

As a result of these service, notice, evidentiary, and other procedural

defects, and because as the record stands, the debtor is not entitled to the relief requested, the motion will be denied by minute order. No appearance is necessary.

1 Without a copy of the abstract of judgment, the court cannot verify the amount of the lien, cannot confirm that it attached to the debtor's property and when, and cannot determine whether it also attaches to the interest of a non-filing individual, such as, for example, the debtor's spouse. The best evidence as to all these issues would be a copy of the recorded abstract of judgment.

28. 08-37361-D-13 RAYMOND/ROSE GREEN MOTION TO VALUE COLLATERAL OF
JDP-1 123 LOAN, LLC
10-15-13 [117]

Tentative ruling:

This is the debtors' motion to value collateral allegedly held by 123 Loan, LLC ("123 Loan"), which the motion states is a second position deed of trust securing a loan for \$155,488. The motion states that the debtors were previously granted an order to avoid the lien of 123 Loan, but are filing another motion to correct service on the prior motion. However, the debtors' prior motion, which was granted by order filed April 21, 2009, was against an entity named as HSBC, not 123 Loan. Further, the proofs of claim on file in this case, Claim Nos. 2 and 30, both in the amount of \$155,488, name the holder of the claim as HSBC Mortgage Services, not 123 Loan, and there is no indication in the record that the claim or the deed of trust has been assigned to 123 Loan.

For this reason, the court is not inclined to grant the motion as against 123 Loan, but will continue the hearing to allow the debtors to provide evidence that the claim is now held by 123 Loan, or in the alternative, to amend the motion to name HSBC Mortgage Services as the respondent. In the event the debtors amend the motion, they will need to serve HSBC Mortgage Services in compliance with Fed. R. Bankr. P. 7004(b)(3), which they have not done.

The court will hear the matter.

29. 13-30563-D-13 MARCELINO/LUZVIMINDA CONTINUED OBJECTION TO
MDE-1 MALVAR CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
9-26-13 [29]

30. 11-44366-D-13 EDNA ADAMS MOTION FOR RELIEF FROM
NLG-1 AUTOMATIC STAY
SETERUS, INC. VS. 10-18-13 [27]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

31. 13-29367-D-13 WILLIAM/JENI FLORES MOTION TO CONFIRM PLAN
JCK-3 10-3-13 [38]

Final ruling:

The motion will be denied as moot. The debtors filed a third amended plan on November 15, 2013, making this motion moot. As a result the court will deny the motion without prejudice by minute order. No appearance is necessary.

32. 13-30768-D-13 SAMUEL/KAREN ARANDA MOTION TO CONFIRM PLAN
TBK-2 10-10-13 [21]

Final ruling:

This is the debtors' motion to confirm a chapter 13 plan. The trustee has opposed the motion on the ground that the plan provides for three secured claims as Class 2 claims, and proposes to pay the value of the collateral securing those claims, whereas the debtors have failed to obtain orders valuing the collateral securing those claims. The debtors have filed a reply indicating that they have filed motions to avoid the judicial liens held by those three creditors, which are set for hearing on December 10, 2013, at 10:00 a.m. At the debtors' request, the court will continue the hearing on this motion to confirm plan to the same date and time. The hearing will be continued by minute order. No appearance is necessary on November 26, 2013.

33. 13-30379-D-13 DANIELLE MARTIN CONTINUED MOTION TO VALUE
DN-1 COLLATERAL OF WELLS FARGO
SERVICING CENTER
9-3-13 [16]

Tentative ruling:

This is the debtor's motion to value collateral of Wells Fargo Bank (the "Bank"); namely, a second position deed of trust against the debtor's residence, at \$0. The Bank opposes the motion. For the following reasons, the motion will be denied.

There is a deed of trust on the property that is senior to the Bank's - the senior lien secures a claim in the amount of \$335,000. Thus, if the value of the property is more than \$335,000, the debtor may not value the Bank's claim under § 506(a) of the Bankruptcy Code. The debtor's evidence as to the value of the property is her own declaration: she states that when she filed this case (on August 6, 2013), the property had a value of \$265,000. The Bank has filed a

declaration of Trever P. Fearrand, who has been a real estate appraiser for over 10 years. Mr. Fearrand has appraised the property, based on both exterior and interior inspections, for the purpose of ascertaining its value as of August 6, 2013. Mr. Fearrand has concluded that the fair market value of the property as of that date was \$375,000. The Bank has filed a copy of Mr. Fearrand's appraisal report.

A homeowner may testify to his or her opinion of the value of his or her property. 2 Russell, Bankruptcy Evidence Manual § 701:2, pp. 784-85 (West 2012-2013 ed.). However, as against the testimony of an individual with professional experience in the real estate industry, the court gives far greater weight to the opinion of the professional. Thus, in this case, the court accords greater weight to Mr. Fearrand's opinion than to the debtor's, and concludes that the fair market value of the property as of the petition date was \$375,000. As such, there is equity in the property over and above the amount due on the senior lien, and the court finds that the Bank's claim must be treated as secured for the purpose of plan confirmation.

The court will hear the matter.

34. 13-29580-D-13 VINCENT/VIRGINIA ALCARIA MOTION TO CONFIRM PLAN
TBK-2 10-10-13 [29]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

35. 13-30380-D-13 MICHAEL HANNA CONTINUED MOTION TO VALUE
DN-1 COLLATERAL OF WELLS FARGO
SERVICING CENTER
8-20-13 [9]

Tentative ruling:

This is the debtor's motion to value collateral of Wells Fargo Bank (the "Bank"); namely, a second position deed of trust against the debtor's residence, at \$0. The Bank opposes the motion. For the following reasons, the motion will be denied.

There is a deed of trust on the property that is senior to the Bank's - the senior lien secures a claim in the amount of \$335,000. Thus, if the value of the property is more than \$335,000, the debtor may not value the Bank's claim under § 506(a) of the Bankruptcy Code. The debtor's evidence as to the value of the property is his own declaration: he states that when he filed this case (on August 6, 2013), the property had a value of \$265,000. The Bank has filed a declaration of Trever P. Fearrand, who has been a real estate appraiser for over 10 years. Mr. Fearrand has appraised the property, based on both exterior and interior

inspections, for the purpose of ascertaining its value as of August 6, 2013. Mr. Fearrand has concluded that the fair market value of the property as of that date was \$375,000. The Bank has filed a copy of Mr. Fearrand's appraisal report.

A homeowner may testify to his or her opinion of the value of his or her property. 2 Russell, Bankruptcy Evidence Manual § 701:2, pp. 784-85 (West 2012-2013 ed.). However, as against the testimony of an individual with professional experience in the real estate industry, the court gives far greater weight to the opinion of the professional. Thus, in this case, the court accords greater weight to Mr. Fearrand's opinion than to the debtor's, and concludes that the fair market value of the property as of the petition date was \$375,000. As such, there is equity in the property over and above the amount due on the senior lien, and the court finds that the Bank's claim must be treated as secured for the purpose of plan confirmation.

The court will hear the matter.

36. 12-25482-D-13 HENRY/ORA HILL MOTION TO MODIFY PLAN
MLA-4 10-4-13 [68]

37. 13-24789-D-13 RONALD/NICOLE TILLMAN MOTION TO MODIFY PLAN
MC-1 10-21-13 [33]

38. 13-33090-D-13 DANIEL ORTIZ AND KIMBERLY MOTION TO VALUE COLLATERAL OF
DN-1 SILVA-HANSON VANDERBILT MORTGAGE AND
FINANCE, INC.
10-29-13 [14]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Vanderbilt Mortgage and Finance, Inc. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Vanderbilt Mortgage and Finance, Inc.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

39. 13-32093-D-13 FAIYAZ/FAMIZA AHAMAD OBJECTION TO CONFIRMATION OF
APN-1 PLAN BY NISSAN MOTOR ACCEPTANCE
CORPORATION
10-21-13 [24]

40. 13-29799-D-13 ARTEMIO/NILDA OLIVAR MOTION TO CONFIRM PLAN
CAH-2 10-8-13 [29]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

41. 13-31810-D-13 OTHA DREAD OBJECTION TO CONFIRMATION OF
RDG-3 PLAN BY RUSSELL D. GREER
11-1-13 [25]

Final ruling:

The objection will be overruled as moot. The debtor filed an amended plan on November 20, 2013, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

42. 11-48232-D-13 SANDRA RUTLEDGE CONTINUED MOTION TO APPROVE
DN-3 LOAN MODIFICATION
10-29-13 [42]

43. 13-23735-D-13 TIMOTHY/ROSE FELZIEN MOTION TO VALUE COLLATERAL OF
KRW-1 LVNV FUNDING, LLC
11-6-13 [97]
44. 11-24639-D-13 PHILLIP/AIDA MILLER MOTION TO INCUR DEBT
CJY-1 11-12-13 [66]
45. 13-26641-D-13 OLA JOSEPH OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
11-1-13 [50]
46. 13-31842-D-13 RONALD/MARILETH JAMORABON OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
11-1-13 [19]

47. 13-31953-D-13 ALBERTO CHAN OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
11-1-13 [28]
48. 13-26259-D-13 JAGROOP SINGH CONTINUED AMENDED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY TRUSTEE
RUSSELL D. GREER
10-11-13 [66]
49. 10-51764-D-13 PAUL/SANDRA BRENGLE MOTION TO APPROVE LOAN
DN-2 MODIFICATION
11-12-13 [38]
50. 13-32165-D-13 QUANG NGUYEN OBJECTION TO CONFIRMATION OF
KK-1 PLAN BY HSBC MORTGAGE SERVICES,
INC.
11-7-13 [30]

51. 13-32165-D-13 QUANG NGUYEN OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY TRUSTEE RUSSELL D.
GREER
11-1-13 [22]

52. 13-31768-D-13 MARIBEL/RAMON AGUILAR OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
11-1-13 [29]

Final ruling:

The objection will be overruled as moot. The debtors filed an amended plan on November 18, 2013, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

53. 13-34172-D-13 WILLIAM/JENNIFER MURRAY MOTION TO VALUE COLLATERAL OF
TBK-1 BANK OF AMERICA
11-12-13 [8]

54. 13-32076-D-13 DAVID RODRIGUEZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
11-1-13 [14]

55. 11-48394-D-13 MANUEL/KAREN MUNGUIA
DN-3

MOTION TO APPROVE LOAN
MODIFICATION
11-12-13 [42]