UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 22, 2016 at 10:00 a.m.

---

1. 16-20500-A-12 KELLY/DEBORA HEISER — MOTION TO EXTEND AUTOMATIC STAY
SJS-1 — 2-8-16 [9]

Tentative Ruling: The motion will be denied.

The debtors are asking the court to extend the automatic stay under 11 U.S.C. § 362(c)(3)(B) because their prior chapter 12 case, Case No. 13-35329-A-12, was dismissed. The prior case was filed on December 3, 2013 and dismissed on September 2, 2015, due to the debtors' failure to prosecute the case. This case was filed on January 29, 2016.

11 U.S.C. § 362(c)(3)(A) provides that 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 one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

11 U.S.C. § 362(c)(3)(B) and (C) further provide that:

"(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."

The motion is timely as it is being heard on September 28, 2015, within 30 days of the September 3, 2015 filing of this case.

The motion will be denied as 11 U.S.C. § 362(c)(3) applies only to a single or joint case filed by a debtor who is an individual in a case under *chapter 7, 11, or 13*. The provision is not triggered by the filing of chapter 12 cases. As such, this motion is unnecessary.

2. 15-25308-A-13 LARRY PERKINS — MOTION TO DISMISS ADVERSARY PROCEEDING
15-2213 RJ-5 — 1-19-16 [13]
PADILLA V. PERKINS

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

The defendant in this adversary proceeding, Larry Perkins, the debtor in the underlying bankruptcy case, seeks dismissal of the action as untimely. The deadline for filing complaints to determine the dischargeability of debts was October 5, 2015. Case No. 15-25308, Docket 15. The Notice of Chapter 13 Bankruptcy Case containing this date was served on the plaintiff on July 18, 2015. Case No. 15-25308, Docket 17.

Despite the October 5, 2015 deadline, the plaintiff, Greg Padilla, filed this adversary proceeding, seeking the nondischargeability of his claims under 11 U.S.C. § 523(a)(2)(A) and § 523(a)(6), on November 4, 2015. As such, the adversary proceeding is untimely.

The court rejects the arguments in the opposition that the October 5, 2015 deadline should be overlooked because the plaintiff is holding a judgment against the defendant, the defendant has had notice of the plaintiff's claims, and the late filing of the adversary proceeding "in no way prejudices the [d]efendant." Docket 20 at 1-3.

The plaintiff is confusing his claims against the bankruptcy estate with an action to declare such claims nondischargeable. This motion has nothing to do with the assertion of the plaintiff's pre-petition monetary claims against the defendant's bankruptcy estate. This motion pertains solely to the deadline for filing post-petition section 523(a) nondischargeability causes of action against the defendant. Just because a creditor holds pre-petition claims against a debtor does not mean that the creditor can disregard the statute of limitations for filing a claim under section 523(a). The statute of limitation is an affirmative defense to the prosecution of this claim.

3.	13-23517-A-7	TRACY GATEWAY, L.L.C.	MOTION TO
	15-2055	MW-2	DISMISS CASE
	FUKUSHIMA V. SUTTER CENTRAL VALLEY HOSPITALS ET AL		1-20-16 [62]

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

The defendant, Sutter Central Valley Hospitals, seeks dismissal of the three claims in the first amended complaint of the plaintiff, Alan Fukushima, the chapter 7 trustee in the underlying bankruptcy case, including a fraudulent conveyance claim (under 11 U.S.C. § 544 and 550 and Cal. Civ. Code § 3439.04), a claim objection cause of action, and an inequitable subordination claim.

Pre-petition, the debtor in the underlying bankruptcy case, Tracy Gateway, L.L.C., sold real property to Sutter for approximately $6.738 million, plus other consideration. At the time, the fair market value of the property was allegedly $17.6 million. As Sutter is a nonprofit organization, with authority to bestow certain tax benefits to donors, the debtor's members reaped a tax benefit from the purportedly undervalued sale of the property. By the instant claims, the plaintiff is seeking to recover the difference in value and sales price of the property, when sold, from Sutter.

Rule 12(b)(6) permits dismissal when a complaint fails to state a claim upon which relief can be granted. Dismissal is appropriate where there is either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Saldate v. Wilshire Credit Corp., 686 F. Supp. 2d 1051, 1057 (E.D. Cal. 2010) (citing Balisteri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990)(as amended)).

"In resolving a Rule 12(b)(6) motion, the court must (1) construe the complaint in the light most favorable to the plaintiff; (2) accept all well pleaded factual allegations as true; and (3) determine whether plaintiff can prove any set of facts to support a claim that would merit relief." See Stoner v. Santa Clara County Office of Educ., 502 F.3d 1116, 1120-21 (9th Cir. 2007); see also Schwarzer, Tashmina & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial, § 9.187, p. 9-46, 9-47 (The Rutter Group 2002).

"*To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. . . . Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of "entitlement to relief."'*"

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (Citations omitted).

"In sum, for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009) (quoting Iqbal at 678).

More recently, the Supreme Court has applied a "two-pronged approach" to address a motion to dismiss:

"*First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. . . . Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. . . . Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. . . . But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'-'that the pleader is entitled to relief.'*

"*In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.*"

Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009) (Citations omitted).

Further, "[i]f, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d); S&S Logging Co. v. Barker, 366 F.2d 617, 622 (9th Cir. 1966). If either party introduces evidence outside of the challenged pleading, a court *may* bring the

conversion provision (Rule 12(d) - converting motion to dismiss into motion for summary judgment) into operation. Cunningham v. Rothery (In re Rothery), 143 F.3d 546, 548-549 (9th Cir. 1998).

11 U.S.C. § 544(b)(1) allows a trustee to avoid a transfer voidable under applicable state law by a creditor holding an unsecured claim.

Cal. Civ. Code § 3439.04(a) provides that "A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation . . .

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor; [or]

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor either;

(A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.

(B) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due."

The causes of action objecting to and seeking subordination of Sutter's proof of claim are anchored to the avoidance claim. 11 U.S.C. § 502(d) provides that "the court shall disallow any claim of any entity from which property is recoverable under section . . . 550 . . . or that is a transferee of a transfer avoidable under section . . . 544 . . . , unless such entity or transferee has paid the amount, or turned over any such property."

Further, under 11 U.S.C. § 510(c)(1) and (2): "[A]fter notice and a hearing, the court may-- (1) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest; or (2) order that any lien securing such a subordinated claim be transferred to the estate."

"*The subordination of claims based on equitable considerations generally requires three findings: '(1) that the claimant engaged in some type of inequitable conduct, (2) that the misconduct injured creditors or conferred unfair advantage on the claimant, and (3) that subordination would not be inconsistent with the Bankruptcy Code.' Feder v. Lazar (In re Lazar), 83 F.3d 306, 309 (9th Cir.1996) (citing Benjamin v. Diamond (In re Mobile Steel Co.), 563 F.2d 692, 699-700 (5th Cir.1977)).*

"*Where non-insider, non-fiduciary claims are involved, as is the case here, the level of pleading and proof is elevated: gross and egregious conduct will be required before a court will equitably subordinate a claim. See In re Pacific Express, Inc. 69 B.R. 112, 116 (B.A.P. 9th Cir.1986) ('The primary distinctions between subordinating the claims of insiders versus those of non-insiders lie in the severity of misconduct required to be shown, and the degree to which the court will scrutinize the claimant's actions toward the debtor or its creditors. Where the claimant is a non-insider, egregious conduct must be proven with particularity.') (citing Matter of Teltronics Servs., Inc., 29 B.R. 139, 169 (Bkrtcy. E.D.N.Y. 1983)). Although equitable subordination can apply*

to an ordinary creditor, the circumstances are 'few and far between.' ABF Capital Mgmt. v. Kidder Peabody & Co., Inc. (In re Granite Partners, L.P.), *210 B.R. 508, 515 (Bkrtcy. S.D.N.Y. 1997) (collecting cases)."*

Henry v. Lehman Commercial Paper, Inc. (In re First Alliance Mortgage Co.), 471 F.3d 977, 1006 (9th Cir. 2006).

Initially, while the amended complaint does not identify the basis for the allegation that the property's value was approximately $17.6 million when sold, Sutter has acknowledged of already obtaining and analyzing the appraisal that served as basis for the $17.6 million valuation. Docket 57 at 2.

The motion will be denied as to the avoidance and claim objection causes of action.

First, this is a disguised summary judgment motion because the motion goes beyond the face of the complaint. The court is unwilling to invoke Rule 12(d) and exercise its discretion to admit matters not found in the amended complaint. The court will not transform this motion to dismiss into one for summary judgment. The parties have conducted no formal discovery. And, the evidence is unpersuasive.

For instance, the references to what the purchase and sale agreement says or it does not say about the value of the property are irrelevant to the actual property value. The court will not be governed by labels on the value of the property to adjudicate the claims.

The absence of a donation of appreciated land from Sutter's 2010 tax return is hearsay. Fed. R. Evid. 802. Sutter's decision not to include such a donation does not necessarily mean that the property was not undervalued when sold and that Sutter did not know the property to be undervalued.

Sutter proffers evidence on the national and California economies from 2000 through the present, contending that the purchase price it paid represented reasonably equivalent value, given the then downturn in the economy.

Specifically, Sutter contends that the local economy in 2010, when escrow for the sale closed, was overall in a terrible shape, with high unemployment, low single family home values and low sales of single family homes. Sutter asserts that, in contrast to 2010, the local economy was in much better condition in 2005, when the debtor and Sutter began negotiating the sale. Sutter's evidence is based on Internet printouts from sites such as Trulia.com and from sources like the United States Bureau of Labor Statistics and the California Association of Realtors. Docket 68 at 72-80.

This evidence lacks credibility as it is inadmissible. The court has no evidence on how Sutter's data about the economy was generated. There is no evidence on the source of Trulia's data, much less on how Trulia generated this data. The same is true as to the data generated by the United States Bureau of Labor Statistics and the California Association of Realtors. The court does not have sufficient information about Sutter's expert evidence to determine whether Fed. R. Evid. 702 and 703 are satisfied.

More important, even if the court were to take judicial notice of the bleak economy in 2010, this is not probative to determining the value of the debtor's *unique* real property sold to Sutter. The downturn in the economy primarily affected the single family home market. While the economic downturn

had an effect on other types of real property, this is far from probative to establish that the subject property was less than $17.6 million in value when sold.

Further, the amended complaint's allegation that the value of the subject property was approximately $17.6 million when Sutter purchased it is a factual assertion and not a legal conclusion. Docket 16 at 3. Also, the $17.6 million assertion is not based on the plaintiff's speculation about the value of the property at the time of sale. It is based on an actual appraisal. Docket 57 at 2. The $17.6 million figure is far greater than the $6.738 million and $11.7 million sale consideration figures named by the plaintiff and Sutter, respectively. Docket 16 at 3; Docket 78 at 7 (at 2 as numbered).

The allegations pertaining to the debtor's remaining assets being unreasonably small in relation to the subject transaction are also factual assertions. Cal. Civ. Code § 3439.04(a)(2)(A). The complaint states that after the sale, the debtor's "only remaining asset of any value was real property that was significantly over encumbered and had no equity." Docket 16 at 5. The complaint also notes that "the [d]ebtor had limited cash" at the time of the transfer. Id.

The amended complaint states a plausible avoidance claim for relief. And, assuming the plaintiff prevails on the avoidance claim, Sutter's proof of claim would be disallowed under section 502(d) unless Sutter pays the value of the avoided transfer or turns over the property to the plaintiff. Accordingly, the motion will be denied as to the avoidance and claim objection causes of action.

Finally, the complaint alleges that Sutter did not take the property in good faith because it "*knew or should have known* it was not paying the [d]ebtor reasonably equivalent value for [the property]." Docket 16 at 4. The court is unconvinced that this is a sufficient allegation to support a plausible equitable subordination claim. Equitable subordination requires that Sutter have "engaged in some type of inequitable conduct."

However, if Sutter did not actually know it was not paying the debtor reasonably equivalent value for the property, the court sees no plausibility of an equitable subordination claim. "[G]ross and egregious conduct will be required before a court will equitably subordinate a claim." First Alliance at 1006. Not knowing that it was not paying reasonably equivalent value for the property does not rise to the level of gross and egregious conduct. The amended complaint then does not plead a plausible equitable subordination claim. The motion will be granted and that claim will be dismissed with leave for the plaintiff to amend the first amended complaint. The motion will be granted in part and denied in part.

4. 13-23517-A-7 TRACY GATEWAY, L.L.C. ORDER TO
15-2065 APPEAR FOR EXAMINATION(YVONNE LAU)
FUKUSHIMA V. APOLLO EQUITY, L.L.C. 1-20-16 [39]

Tentative Ruling: None. The respondent shall appear prior to the start of the 10:00 a.m. calendar to be sworn in for the examination.

5. 13-23517-A-7 TRACY GATEWAY, L.L.C. ORDER TO
15-2065 SHOW CAUSE
FUKUSHIMA V. APOLLO EQUITY, L.L.C. 1-12-16 [38]

Tentative Ruling: The court issued this order to show cause because Apollo

Equity, L.L.C. did not appear for an examination on January 11, 2016. The examination was continued to February 22, 2016 at 10:00 a.m.

At the February 22 hearing, the court will consider assessing sanctions against Apollo if it determines that Apollo willfully failed to obey the court's November 13, 2015 order to appear at the January 11, 2016 examination.

If Apollo fails to appear on February 22, the court also will consider sanctions to compel attendance at an examination and production of records, including authorizing the apprehension of a representative of Apollo by the U.S. Marshall to compel such attendance and production.

6.	13-23517-A-7 15-2065	TRACY GATEWAY, L.L.C. FUKUSHIMA V. APOLLO EQUITY, L.L.C.	ORDER TO APPEAR FOR EXAMINATION (APOLLO EQUITY, L.L.C.) 11-13-15 [36]

Tentative Ruling: None. A responsible individual for the judgment debtor, Apollo Equity, L.L.C., shall appear prior to the start of the 10:00 a.m. calendar to be sworn in for the examination.

7.	11-39127-A-12 RLC-2	CASEY CAMPBELL	MOTION FOR ENTRY OF DISCHARGE 1-13-16 [149]

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

The motion for entry of a chapter 12 discharge will be granted.

11 U.S.C. § 1228(a) provides that:

"Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

(2) of the kind specified in section 523(a) of this title."

This case was filed on August 4, 2011. The court confirmed the debtor's chapter 12 plan on September 26, 2012. Docket 130. The debtor does not have any domestic support obligations.

First, the trustee filed a final report on October 28, 2015 and the report was approved on December 18, 2015. Dockets 144 and 146. The trustee's report demonstrates that the debtor has made the payments required by the plan and that the trustee has made the payments to creditors required by the plan. Dockets 113 & 144. The requirement imposed by 11 U.S.C. § 1228(a) that the debtor receive a discharge only after completion of all payments under the plan has been satisfied.

Second, the debtor has filed a certificate in connection with this motion that the debtor is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. See 11 U.S.C. § 1228(a); Docket 151 at 1-2. No objection has been filed to that certificate and the time to file an objection has expired.

Finally, by service of this motion, the debtor has given all creditors notice that 11 U.S.C. § 522(q)(1) is not applicable. Docket 151 at 1. No creditor has objected to this notice. This satisfies the requirements of 11 U.S.C. § 1228(f).

Therefore, no earlier than 10 days after the hearing on this motion, the clerk shall enter the debtor's discharge. See 11 U.S.C. § 1228(f).

8. 15-29541-A-12 TIMOTHY WILSON — MOTION TO CONFIRM CHAPTER 12 PLAN 1-22-16 [20]
WW-1

Tentative Ruling: The motion will be denied without prejudice.

The debtor is seeking approval of his chapter 12 plan filed on January 22, 2016.

The motion will be denied. The debtor's two lien avoidance motions and one valuation motion (Umpqua Bank) on this calendar are being dismissed or denied. The plan cannot be confirmed because it contemplates avoidance of the liens and valuation of the properties.

Further, as pointed out by the trustee, the plan pays unsecured creditors less than what they would receive in a chapter 7 proceeding. Under the plan they will receive only $114.80, whereas the debtor's schedules disclose $17,027.70 in non-exempt assets.

Finally, neither the court, nor the trustee can determine whether the debtor will be able to make all proposed plan payments. 11 U.S.C. § 1225(a)(6). Although the trustee has requested the debtor's 2015 profit and loss statement, it has not been provided to him. The motion will be denied.

9. 15-29541-A-12 TIMOTHY WILSON
WW-10
VS. COMMERCIAL EQUIPMENT LEASE CORP., ET AL.

MOTION TO AVOID JUDICIAL LIEN
2-8-16 [51]

Tentative Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Wells Fargo Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed solely to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Officer/Managing Agent." Docket 74 at 4. This does not satisfy Rule 7004(h).

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

Further, although the motion directs the court to the attached exhibits for the amount of each judgment lien, the attached exhibits do not contain amounts for the judgment liens. Dockets 61 & 69. Hence, the references to the amounts of the judgment liens in the motion are inadmissible hearsay. Fed. R. Evid. 802. The same is true with respect to the amounts for the voluntary encumbrances against the properties.

10. 15-29541-A-12 TIMOTHY WILSON
WW-11
VS. SUSQUEHANNA COMMERCIAL FINANCE

MOTION TO AVOID JUDICIAL LIEN
2-8-16 [62]

Tentative Ruling: The motion will be denied without prejudice.

Although the motion directs the court to the attached exhibits for the amount of the subject judgment lien, the attached exhibits do not contain amounts for any of the encumbrances. Docket 65. Hence, the reference to the amount of the judgment lien in the motion is inadmissible hearsay. Fed. R. Evid. 802.

11. 15-29541-A-12 TIMOTHY WILSON
WW-12
VS. GEORGE AND SYLVIA NIU

MOTION TO VALUE COLLATERAL
2-8-16 [66]

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

The motion will be granted.

The debtor requests an order valuing parcel two of a real property in Pioneer, California, in an effort to strip down to $4,175.78 George and Sylvia Niu's claim secured by a second deed of trust on parcel two. The claim is not secured by the other parcel of the property, where the debtor's residence is located. The debtor conducts various farming operations on parcel two.

11 U.S.C. § 1222(b)(2) allows a chapter 12 debtor to modify the rights of secured claim holders. Unlike chapters 11 and 13 of the Bankruptcy Code, chapter 12 does not contain an anti-modification provision. This means that a chapter 12 debtor may strip down claims secured by his principal residence.

Pursuant to 11 U.S.C. § 506(a)(1), a secured claim is a secured claim only to the extent of the creditor's interest in the estate's interest in the collateral. 11 U.S.C. § 506(a)(1) provides that:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

"[The value of the collateral] shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

A debtor's opinion of value is evidence of value and it may be conclusive in the absence of contrary evidence. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor contends that the property has a value of $220,000. Docket 68 at 2; Docket 1, Schedule A.

The property is subject to the following unavoidable claims:

- a first mortgage in favor of Randy and Janet Wright and Jack Faradon for $215,824.22,

- a second mortgage in favor of George and Sylvia Niu for $44,073, and

- a third mortgage in favor of Shirley Sittner for approximately $89,000.

Docket 68.

George and Sylvia Niu's second deed claim is partially unsecured within the meaning of 11 U.S.C. § 506(a)(1) because the estate has only $4,175.78 of equity in the property, after the deduction of the Wrights and Mr. Faradon's claim. George and Sylvia Niu's second deed claim will be stripped down to $4,175.78, with the remainder of the claim to become an unsecured claim.

The motion will be granted in part only in connection with plan confirmation.

Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. It is only when such a motion or objection is joined with a request to determine

the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). Therefore, by granting this motion the court is only determining the value of the respondent's collateral. The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's lien will remain of record until the plan is completed. See 11 U.S.C. § 349(b). Once the plan is completed, if the respondent will not reconvey/cancel its lien, the court then will entertain an adversary proceeding.

12. 15-29541-A-12 TIMOTHY WILSON
WW-2
VS. UMPQUA BANK

MOTION TO VALUE COLLATERAL
1-22-16 [24]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Umpqua Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution. The proof of service accompanying the motion indicates that the notice was not addressed to anyone. And, service was no effectuated by certified mail. Docket 31. This violates Rule 7004(h).

13. 15-21575-A-11 BR ENTERPRISES, A CALIFORNIA PARTNERSHIP
HLC-18

MOTION FOR FINAL DECREE AND ORDER CLOSING CASE
1-25-16 [267]

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

The motion will be granted.

The debtor is asking the court to close the case and enter a final decree, contending that the plan was confirmed, that payments under the confirmed plan are being made, that all post-confirmation reports have been filed, and that there are no pending motions or adversary proceedings.

11 U.S.C. § 350(a) provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." Similarly, Fed. R. Bankr. P. 3022 provides that "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case."

In the chapter 11 context, courts have defined full administration as substantial consummation. In re Wade, 991 F.2d 402, 406 n.2 (7th Cir. 1993) (citing In re BankEast Corp., 132 B.R. 665, 668 n.3 (Bankr. D.N.H. 1991)). Substantial consummation is defined by section 1101(2) as "(A) transfer of all or substantially all of the property proposed by the plan to be transferred;

(B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan."

This court confirmed the debtor's chapter 11 plan on December 1, 2015. The confirmation order is final. Property has revested in the debtor pursuant to the terms of the plan. Docket 236 at 30.

Given that the debtor is current on plan payments, that it has continued to operate its business under the terms of the confirmed plan, and given that there are no outstanding motions or adversary proceedings, substantial consummation has been achieved. Accordingly, the court will enter a final decree and close the case. The motion will be granted.

14. 14-31890-A-11 SHAINA LISNAWATI — MOTION TO APPROVE AMENDED DISCLOSURE STATEMENT
JHH-10 — 1-11-16 [234]

Tentative Ruling: The motion will be denied without prejudice.

The debtor is asking the court to approve the amended disclosure statement filed on December 30, 2015. Docket 234.

PennyMac Holdings, a mortgagee on one of the debtor's partially-owned real properties, opposes approval of the disclosure statement.

The motion will be denied for the following reasons:

(1) The disclosure statement does not state when the debtor purchased each of her real properties, when she transferred fractional interests in such properties, how much fractional interest she transferred and to whom she transferred such interests in the properties, what is the relationship between the debtor and the persons to whom she transferred the fractional interest in the properties, and why she transferred the fractional interests in the properties.

(2) The disclosure statement does not state what the debtor will do with her Rose Avenue property and how the property's encumbrances will be treated under the plan in the event the property does not sell.

(3) The disclosure statement does not provide an accurate disclosure of the debtor's loan modification agreement with PennyMac as to the Silkwood Drive property. The disclosure statement seems to say that the loan modification agreement with PennyMac is permanent, whereas PennyMac denies this, contending that the debtor is performing under a trial loan modification program.

(4) The disclosure statement does not state what the debtor will do with her Silkwood Drive property and how the property's encumbrances will be treated under the plan in the event there is no permanent loan modification with PennyMac.

Future amendments of the disclosure statement should be accompanied by a red/black-lined version.

15. 14-31890-A-11 SHAINA LISNAWATI — STATUS CONFERENCE
12-6-14 [1]

Tentative Ruling: None.

16. 14-31393-A-11 GAJENDRA/MUNA ADHIKARI — MOTION FOR APPROVAL OF COMBINED DISCLOSURE STATEMENT AND PLAN
DRE-3 — 12-30-15 [52]

Tentative Ruling: The motion will be denied without prejudice.

The debtors are seeking the approval of a combined plan and disclosure statement filed on December 30, 2015.

The California Franchise Tax Board opposes the motion.

The motion will be denied because the notice of hearing is confusing. It states that the debtors are seeking "additional 60 days within which to file their proposed Disclosure Statement and Chapter 11 Plan." Docket 53 at 1. This makes no sense as the motion is asking approval of the debtors' combined plan and disclosure statement.

Also, combined disclosure statements and plans are authorized only for small business debtors. See 11 U.S.C. § 1125(f)(1). These debtors are not small business debtors.

Whether or not the disclosure statement in this case is combined with the plan, it will not be approved for many reasons.

(1) The disclosure statement does not say how the debtors will comply with 11 U.S.C. § 1129(a)(9)(C) in the payment of California Franchise Tax Board's priority $216,180.47 claim. The plan will pay the FTB only a share of $300 a month for five years (a total, at most, of $18,000). Docket 55 at 2-3.

(2) Given the opposition of the FTB and the plan's $0 dividend to governmental general unsecured creditors – including the FTB – the disclosure statement should contain a discussion about whether the debtors are paying their monthly disposable income into the plan.

(3) The disclosure statement is unclear as to why payments to Uddhav Giri will be made by the debtor. Docket 55 at 8.

(4) The disclosure statement does not explain why the plan is paying in full non-governmental general unsecured claims, whereas it is not paying anything on account of the governmental general unsecured claims (> $1 million total IRS and FTB claims). Docket 55 at 8. The debtors should explain on what basis they are discriminating against governmental general unsecured claims. 11 U.S.C. § 1122(b) allows only a separate convenience general unsecured class of claims.

(5) The disclosure statement should include a discussion on whether the absolute priority rule applies and, if it does, how the debtors plan to comply with it.

(6) The disclosure statement admits that the plan does not comply with 11 U.S.C. § 1129(a)(11) because confirmation is highly likely to be followed by

liquidation or the need of further financial reorganization. The disclosure statement says that the governmental general unsecured claims (> $1 million total IRS and FTB claims) will not be discharged under the plan.

But, if the debtors do not have the funds to pay those claims now, how are they going to pay such claims later? The disclosure statement should address this.