UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

February 25, 2014 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.

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1. 12-92003-D-13 RONALD/JACKIE FRIED — MOTION TO MODIFY PLAN
CJY-3 — 1-15-14 [41]

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.

2. 10-94904-D-13 CJY-1 — FREDERICK/LOUISE HINTZ — MOTION TO MODIFY PLAN 1-13-14 [27]

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.

3. 13-90204-D-13 CJY-3 — LEONARDO/JESUSA MANGROBANG — CONTINUED MOTION TO MODIFY PLAN 12-17-13 [62]

4. 13-91805-D-13 RLF-2 — HOWARD/PAMELA KEMP — MOTION TO VALUE COLLATERAL OF NYCB MORTGAGE COMPANY 1-28-14 [33]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of NYCB Mortgage Company 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 NYCB Mortgage Company's secured claim at $0.00 by minute order. No further relief will be afforded. No appearance is necessary.

5. 14-90009-D-13 JDP-1 — ROBERT/JOOLET ALVAGI — MOTION TO VALUE COLLATERAL OF BRANDSOURCE, INC. 1-16-14 [8]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that 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, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

6. 13-92023-D-13 MAURICE MOODY — MOTION TO VALUE COLLATERAL OF SPRINGLEAF FINANCIAL SERVICES, INC.
FF-3 — 1-14-14 [23]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Springleaf Financial Services, 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 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 Springleaf Financial Services, Inc.'s secured claim at $0.00 by minute order. No further relief will be afforded. No appearance is necessary.

7. 12-92725-D-13 BARBARA LOCKETT — MOTION TO MODIFY PLAN
CJY-1 — 1-16-14 [31]

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.

8. 11-93829-D-13 DONALD/JANICE HAMILTON — MOTION TO RETAIN INSURANCE PROCEEDS FOR SUBSTITUTION OF VEHICLE
BPC-1 — 1-24-14 [27]

9. 13-92131-D-13 JUAN FELIX MARTINEZ — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
RDG-2 — 1-27-14 [43]

Final ruling:

This case was dismissed on February 3, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

10. 13-90936-D-13 LUZ FELIX
WELLS FARGO BANK, N.A. VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-24-13 [24]

CASE DISMISSED 6/3/13

11. 09-90938-D-13 NEAL/MELINDA STOW
JDP-1

MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A.
1-23-14 [56]

Final ruling:

This is the debtors' motion to value collateral of JPMorgan Chase Bank, N.A. (the "Bank"). The hearing will be denied because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank by certified mail to the attention of an officer, which is generally sufficient under Rule 7004(h). However, in this case, two different law firms filed requests for special notice on behalf of the Bank, thus bringing into play subdivision (1) of Rule 7004(h), which requires that, where an FDIC-insured institution has appeared in an action by an attorney, service must be on the attorney by first-class mail. Subdivision (1) supersedes the main rule; that is, service must be made by certified mail to the attention of an officer unless the institution has appeared by an attorney, in which case service must be made pursuant to subdivision (1). In this case, the moving parties served the Bank through the attorneys who filed the first request for special notice, in 2009, but not through the attorneys who filed the second one, in 2012.

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

12. 13-92138-D-13 JEANNE SNELL
RDG-1

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
1-27-14 [15]

13. 12-92439-D-13 WILLIAM/SHEILA SMITH — MOTION TO MODIFY PLAN
DEF-4 — 12-23-13 [65]

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.

14. 13-92139-D-13 JUAN/YVETTE LARIOS — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
RDG-1 — 1-24-14 [14]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

15. 13-92140-D-13 ARTURO/MARISELA BARAJAS — MOTION TO VALUE COLLATERAL OF CALIFORNIA HOUSING AGENCY
JDP-5 — 1-29-14 [34]

16. 13-92140-D-13 ARTURO/MARISELA BARAJAS — MOTION TO VALUE COLLATERAL OF CITY OF CERES
JDP-6 — 1-29-14 [40]

17. 13-91545-D-13 RAC-2 — THOMAS/ZENIA HANSEN — MOTION TO MODIFY PLAN 1-10-14 [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.

18. 11-90750-D-13 JDP-1 — JUAN PEREZ AND MARIA ANGULO — MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A. 1-27-14 [55]

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.

19. 08-91956-D-13 JDP-1 — SALVADOR/SONIA HERNANDEZ — MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK 1-16-14 [65]

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.

20. 09-92059-D-13 CJY-1 — DARRELL/AMY ALEXANDER — MOTION TO MODIFY PLAN 1-9-14 [146]

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.

21. 13-92172-D-13 RAMIRO GARCIA — MOTION TO CONFIRM PLAN
TOG-4 — 1-10-14 [15]

Final ruling:

This is the debtor's motion to confirm a chapter 13 plan. The motion will be denied because the moving party failed to serve Mariam Ortiz, listed on the debtor's Schedule G, at all. Pursuant to Fed. R. Bankr. P. 1007(a)(1), a debtor is required to file with his or her petition a list containing the name and address of each entity included or to be included on Schedules D, E, F, G, and H. In this case, the debtor's Schedule G, filed roughly three weeks after the petition was filed (pursuant to an order extending time), lists Mariam Ortiz as the debtor's renter, and it lists her address. Mariam Ortiz's name is listed on the debtor's master address list filed with the petition; her address is not, although it seems unlikely the debtor, at the time the petition was filed, was unaware of her address. In any event, the debtor was required to list Mariam Ortiz's name and address on his master address list. He did not do so.

Debtors' attorneys sometimes, apparently, believe a person who rents property from a debtor, and thus is listed on the debtors' Schedule G, is not a creditor, and therefore, need not be listed on the master address list and need not receive notice of the case and notice of a motion to confirm a chapter 13 plan. As to the master address list, the matter is covered by Fed. R. Bankr. P. 1007(a)(1), which expressly requires that persons and entities listed on Schedule G be listed on the master address list. As to the requirement of Fed. R. Bankr. P. 2002(b) that all creditors be noticed of motions to confirm chapter 13 plans, in light of the very broad definition of "creditor" under the Bankruptcy Code (see § 101(5) and (1)), there is no doubt that parties to executory contracts and unexpired leases, even on a month-to-month basis, are creditors within the applicable definition and must be noticed of motions to confirm chapter 13 plans.

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

22. 08-92273-D-13 VINCENT/LINDA ALTADONNA — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
JDP-1 — 1-15-14 [59]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of America, 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 Bank of America, N.A.'s secured claim at $0.00 by minute order. No further relief will be afforded. No appearance is necessary.

23. 14-90092-D-13 ARTURO/CARMINA GONZALES MOTION TO VALUE COLLATERAL OF BANK OF THE WEST
RLF-1 1-28-14 [8]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of the West 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 Bank of the West's secured claim at $0.00 by minute order. No further relief will be afforded. No appearance is necessary.

24. 13-91995-D-13 MIGUEL/GLORIA VARGAS OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
RDG-2 1-6-14 [19]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. The trustee has objected on the ground that the debtors have claimed their exemptions under an improper code section. The debtors have acknowledged in their response that their exemptions are claimed under an improper code section. The court agrees, and accordingly, the trustee's objection will be sustained and the trustee is to submit an appropriate order. No appearance is necessary.

25. 14-90001-D-13 LENA BAKER MOTION TO RECONSIDER
LOB-1 2-5-14 [33]

Final ruling:

This is the debtor's "petition for reconsideration" of the court's order denying the debtor's motion to extend the automatic stay, which was brought pursuant to § 362(c)(3)(B) of the Bankruptcy Code.[1] The motion to extend the stay was denied by minute order filed January 30, 2014, DN 28 on the court's docket (the "Order"). The basis for the Order is set forth in the court's ruling, which is contained in the civil minutes for January 28, 2014, DN 25. For the following reasons, the petition will be denied.[2]

The debtor's prior case, Case No. 13-90282, was pending over 10 months before it was finally dismissed on the trustee's fourth motion to dismiss, which had been brought for unreasonable delay that was prejudicial to creditors and for failure to confirm a plan. During that 10-month period, the debtor failed to obtain confirmation of a chapter 13 plan, and the dismissal was based specifically on her failure to comply with the court's conditional order requiring that she confirm a plan by a certain date.[3] Thus, a presumption arises in this new case that the case was not filed in good faith, pursuant to § 362(c)(3)(C)(i)(II)(aa) (failure to file or amend the petition or other documents as required by the Bankruptcy Code or the court without substantial excuse). The debtor has failed to persuade the court, on either her motion to extend the stay or this petition for reconsideration, that the pattern of delay will not be repeated in this case, and thus, that this case will be concluded with a confirmed plan that will be fully performed.

The court denied the debtor's motion to extend the stay based largely on her failure to submit any supporting evidence whatsoever, despite the fact that the presumption of bad faith can be rebutted only by clear and convincing evidence. See § 362(c)(3)(C). With the petition for reconsideration, the debtor's attorney claims to have "gathered the relevant information to provide clear and convincing evidence that the motion to extend the automatic stay should be granted." Petition for Reconsideration, filed Feb. 5, 2014 ("Pet."), at 1:25-27. However, he has not presented any evidence in admissible form. Instead, he has submitted as exhibits a series of documents that have not been authenticated, as required by Fed. R. Evid. 901(a), and that constitute hearsay.[4] The petition will be denied for that reason.

The petition will be denied for the additional independent reason that even if the court were to consider the debtor's exhibits, they would not establish, as the debtor contends, that there has been a significant change in her financial affairs since the prior case was dismissed, on November 20, 2013, and thus, that the court should have extended the automatic stay. See § 362(c)(3)(C)(i)(III). Assuming it had been submitted in admissible form, the first exhibit would demonstrate that the debtor is receiving social security income in the amount of $1,133 per month since January 1, 2014, which is $17 per month more than the amount listed on the debtor's Schedule I filed in this case. That in itself is not a significant change.

The debtor offers the second exhibit to show a more significant change:

> The debtor's secured payment to Wells Fargo [B]ank for the mortgage on the property at 2117 Shaddox Ave., Modesto, CA has been increased from $1164 per month to $1267.13. (Exhibit 2) This increase represents an amortization of the arrears over the life of the loan. This increase for the mortgage payment, amortizes the arrearage over the remaining term of the loan and eliminates the need for the arrearage payment in the plan in the amount of $522.

Pet. at 2:5-9. This argument borders on the disingenuous. Exhibit 2 is a purported letter from Wells Fargo Home Mortgage to the debtor's attorney dated September 20, 2013, referring to a payment change effective with the March 2013 payment, whereas months later, on January 15, 2014, the debtor's conservator and the debtor's attorney propounded a chapter 13 plan in this case showing mortgage arrears of $14,106, to be repaid through the plan at $522 per month.[5] In short, Exhibit 2, assuming it were in admissible form, would demonstrate that the change in the mortgage payment and the amortization of the mortgage arrears took place several months before the debtor's prior case was dismissed. It would not support the conclusion that there has been a significant change in the debtor's financial affairs since the dismissal of the prior case.[6]

In the ruling underlying the Order, the court questioned whether the debtor's conservator had the ability to bring in $1,250 per month in rental income, since the debtor's Form 22C shows no income at all for the six months preceding the filing of this case. The debtor has now submitted an unauthenticated listing (that is also hearsay), purporting to show rental income, at $1,250 per month, for the months from April 2013 through October 2013. The debtor's attorney states that the omission of the rental income from Form 22C was an oversight on his part, and that it is one of the corrections to be included in amended schedules he intends to file. However, as of this date, no amended schedules have been filed, and no amended Form 22C has been filed.[7]

The court will assume, for purposes of this petition, that the debtor does have steady income from the rental property in the amount of $1,250 per month. The court will also assume, although the only "evidence" offered is an unauthenticated hearsay letter from the Director of Social Services for Baypoint Healthcare Center, that the debtor's residence there is covered by Medicare and Medi-Cal, and that any other needs are covered by her son and conservator, Ken Baker.[8] There remains, however, no admissible evidence to support a conclusion that there has been a significant change in the debtor's financial affairs since the dismissal of the prior case.

It is also significant that the debtor has failed to file an amended Schedule I and an amended Form 22C to disclose the rental income, and has failed to file an amended plan to remove the $522 per month payment toward the mortgage arrears. Further, the trustee's report of the initial meeting of creditors in this case indicates that both the debtor (presumably, the debtor's conservator) and the debtor's attorney failed to appear, and the meeting has been continued to March 26, 2014. These points support the conclusion that the pattern of delay exhibited in the prior case will continue in this case, and the court has no basis on which to conclude that this case will be concluded with a confirmed plan that will be fully performed.

A considerable portion of the petition is devoted to a discussion of the probate exception to federal jurisdiction, leading to the conclusions: (1) that "the assets of this case are assets of the probate estate not [the] bankruptcy estate" (Pet. at 4:2); and (2) that:

> **it could be argued that the court's tentative decision [denying the motion to extend the automatic stay] is depriving the probate estate protection for its largest asset when the purpose of the [bankruptcy] filing was to permit the retention of the property through the payment of arrears. This decision is determining the outcome and control of the property when the property is a part of the probate/conservatorship estate. This court is exercising control over the assets of the probate estate, jurisdiction [as to] which has not been permitted since the Judiciary Act of 1789. Markham v. Allen, 326 U.S. 490, 66 S.Ct. 296, 90 L.Ed. 256 (1946).**

Pet. at 5:2-7. These arguments create and, the court believes, reflect considerable confusion about the interplay between probate and bankruptcy law and procedure as they apply in this case. The arguments suggest, first, that this court has no jurisdiction over the debtor's rental property: if that is the case, on what theory would the court have jurisdiction to extend the automatic stay or even to rule on a motion to extend the stay? Second, the implicit argument is that a bankruptcy court has no jurisdiction to deny a motion to extend the automatic stay in any case where a conservatorship proceeding is pending when a bankruptcy case is filed on behalf of the conservatee. If that were the case, the law would be clear, either as a matter of statute or of case law; here, the debtor has cited nothing except two cases that are not on point. In short, that argument fails and the court is not persuaded that it lacked jurisdiction to deny the motion to extend the stay or that it should alter that decision.

Finally, the petition states that the debtor "wants to retain possession and if possible to die in her home of the last 30 years." Pet. at 4:20-21. As with all the contentions in the petition, there is no admissible evidence in support of this statement, and it appears to be contradicted by the fact that, since at least the date the prior case was commenced, February 15, 2013, the debtor has been living in

a skilled nursing facility, and the motion to extend the automatic stay suggested that her condition will deteriorate.[9] Further, there is no explanation what the effect on the debtor's budget would be if she were to move back into the property that is now rented out and, presumably, lose the rental income. The petition adds that "[t]he conservator has the obligation to acknowledge the debtor's request and to retain property that can appreciate in value over time." Pet. at 4:21-22. The debtor offers no authority, and the court is aware of none, for the proposition that it is an appropriate function of the automatic stay to permit a debtor to retain property in the hope that it will appreciate in the future.

To conclude, the petition has served only to raise more doubts about the accuracy and completeness of the schedules, statements, forms, and even the petition in this case, which did not accurately list the debtor's street address, and about the seriousness with which the debtor's conservator has approached his duty in this regard. There is nothing in the petition that would support a conclusion that the court's denial of the motion to extend the automatic stay was not the correct result.

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

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1 All statutory references are to the Bankruptcy Code, Title 11, United States Code.

2 In the interest of avoiding a further motion addressing the issue, the court assumes for the purpose of this decision only, but without deciding, that the petition for reconsideration may properly be granted, if warranted, despite the requirement that the hearing on a motion to extend the stay must be completed within the 30-day period following the filing of the case, a period that in this case expired on January 31, 2014.

3 For the sake of simplicity, the court will refer to the debtor, recognizing that, for many of the matters discussed, it may be more accurate to refer to the debtor's conservator.

4 The Federal Rules of Evidence apply in bankruptcy cases. Fed. R. Bankr. P. 9017.

5 On January 15, 2014, the debtor's conservator also verified under oath the debtor's Schedule I showing the mortgage payment as $1,164, not the $1,267 the debtor's attorney knew about almost four months earlier.

6 In similar fashion, the debtor cites Exhibit 3 for the proposition that the property taxes accounted for in the original plan (in the prior case), to be paid at $48 per month, had actually been paid. Thus, the debtor claims her financial circumstances have changed for the better by $48 per month. However, first, this "change" is not significant, and second, the property tax statements filed as Exhibit 3 show the property tax installments have been paid on time since at least 2011, and thus, no claim for back taxes should have been included in the first place.

7 The court notes that the original Form 22C filed in the prior case did not include any rental income, and that an amended Form 22C was filed in that case to

include the rental income, at $1,250 per month. That counsel has repeated the oversight again in this case is not a favorable indication for this case. More important, the incorrect Form 22C was signed under oath by the debtor's conservator, who thereby failed to comply with his duty to provide true, correct, and complete information in the papers filed in this case. See Hickman v. Hana (In re Hickman), 384 B.R. 832, 841 (9th Cir. BAP 2008), citing Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 417 (9th Cir. BAP 2007).

8 This is the first time there has been any indication in the record, in either the prior case or this one, of the debtor's actual residence address. The petitions in both cases listed her street address as the rental property in Modesto, and her mailing address as a post office box in Union City. By contrast, in both cases, the Schedules I clearly indicate that the debtor resided and resides in a skilled nursing facility, presumably the Baypoint Healthcare Center, in Hayward.

9 "As the debtor's condition deteriorates, certain treatments and medication may not be covered by Medicare and will have to be paid by the conservatee's estate." Memo. in Support of Motion to Extend Stay, filed Jan. 14, 2014, at 5:9-11.

26.	14-90002-D-13 DCJ-1	GREGORY SCOTT	CONTINUED MOTION TO IMPOSE AUTOMATIC STAY 1-14-14 [9]
27.	11-93132-D-13 CJY-3	JESSE/SUSAN MIRELES	MOTION TO APPROVE LOAN MODIFICATION 2-6-14 [50]
28.	12-91246-D-13 CJY-9	BARRY/ELIZABETH WORTHAM	MOTION TO APPROVE LOAN MODIFICATION 2-6-14 [140]

29. 12-91246-D-13 CJY-10 — BARRY/ELIZABETH WORTHAM — MOTION TO APPROVE LOAN MODIFICATION
2-6-14 [145]

30. 13-92170-D-13 MLP-1 — TATIANA LAGOUTOTCHKIN — MOTION TO VALUE COLLATERAL OF WELLS FARGO HOME MORTGAGE
2-4-14 [17]

31. 13-92099-D-13 RJ-2 — LINDA VAUGHAN — MOTION TO VALUE COLLATERAL OF L. A. COMMERCIAL GROUP, INC.
2-11-14 [47]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtor's motion to value collateral of L. A. Commercial Group, Inc. ("L.A. Commercial"). The motion was brought pursuant to LBR 9014-1(f)(2); however, regardless as to whether the motion is opposed, the court is not prepared to grant the relief requested.

The court intends to deny the motion for several reasons. First, the motion does not clearly indicate the purpose for which the valuation is sought; thus, it fails to provide sufficient information to enable the potential respondent to determine whether to oppose the motion. Second, it appears the motion is premature.

The moving papers do not mention any particular section of the Bankruptcy Code or other authority under which the valuation is sought. However, it appears § 506(a)[1] is the only statutory authority that could apply to the relief sought. The motion states that it "seeks to establish that the secured claim is $0.00 after taking into account Senior liens." Motion to Value, filed Feb. 11, 2014 ("Mot."), at 1:28-2:1.[2] That suggests the debtor is relying on § 506(a). Pursuant to that subsection, the value of a creditor's interest in the estate's interest in property "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." § 506(a). Here, the moving papers do not clearly indicate the proposed disposition or use of the property by the debtor, and the motion is not being heard in conjunction with a hearing on the debtor's proposed chapter 13 plan.

The motion refers indirectly to a possible sale of the property, as follows: "Unless there is significant overbidding at the court hearing on the sale of the collateral, all of the respondents will receive nothing." Mot. at 4:4-6.[3] The debtor's supporting declaration adds: "I do not preclude the possibility of overbidding on the eventual motion allowing sale of the property . . . ." Debtor's Declaration, filed Feb. 11, 2014 ("Decl."), at 4:19-21. A review of the debtor's proposed chapter 13 plan indicates the debtor does indeed intend a sale of the property, which she predicts will occur within six months. Thus, the proposed disposition of the property is a sale, and the valuation of L.A. Commercial's secured claim would be for the purpose of a sale. For that purpose, the court would determine the value of the property, and hence, the value of L.A. Commercial's secured claim, based on what the buyer proposes to pay for the property, including the price any successful overbidder offers to pay, assuming an arm's-length transaction after the property has been exposed to the market for a reasonable period of time. The court would determine the value of the property only at the time of sale, in conjunction with a motion to approve the sale. Thus, the present motion will be denied as premature.

Third, assuming the moving papers had included sufficient information to inform the potential respondent of the purpose for which the valuation is sought, and assuming the court were presented with a motion to sell the property at the value asserted by the debtor, $545,000 (with satisfactory evidence of an arm's-length transaction after exposure to the market), it does not appear the debtor is entitled to the relief requested. The debtor seeks to establish that the value of the property is $545,000, and that the value of L. A. Commercial's secured claim is $0, taking into account senior liens against the property. However, the senior liens the amounts of which are clearly stated (the three deeds of trust) total only $483,500, leaving $61,500 in value available to secure the judgment lien of L. A. Commercial and/or one or more of the other four judgment liens against the property.[4]

The amount of available equity may be even higher. The debtor's supporting declaration states as follows, regarding the value of the property: "On the November 27, 2013 petition date, the value of the realty commonly known as [address] was scheduled at $545,000.00. I hereby reiterate that petition date valuation." Decl. at 2:22-25. Turning, then, to the debtor's Schedule A, the debtor listed the value of the property at $545,000, with the following qualification: "Potential sale price as much as $590,000, from that deduct commissions and bankruptcy case administrative costs, and assessments against the property which are senior to the fully secured Deeds of Trust." Assuming the deduction of costs of sale is appropriate in this situation despite the holding of Taffi v. United States (In re Taffi), 68 F.3d 306, 310 (9th Cir. 1995), the debtor has submitted no authority for the proposition that judgment lienholders should be subordinate to bankruptcy administrative claims, and there is no indication in the record of "assessments" senior to the deeds of trust.

The debtor attempts to show the senior liens against the property as greater than $483,500, and it appears they may be, but not by as much as the debtor contends. The IRS and the Franchise Tax Board have filed secured claims in this case for $8,290 and $3,356, respectively, for a total of $11,646. The debtor or her counsel attempts to inflate those figures, with no support or analysis, and the debtor has not formally challenged those claims.[5] Thus, the proofs of claim stand as prima facie evidence of their amounts (Fed. R. Bankr. P. 3001(f)), and assuming the other problems with the motion discussed above were corrected, the court would

deny the motion to whatever extent it depended on the debtor's unsupported allegations as to the amounts of the IRS's and Franchise Tax Board's secured claims.

Finally, the motion refers to two alleged mechanic's liens, stating as to each: "It appears that this lien should be construed as having expired." Mot. at 3:14-15, 3:25-26. Neither mechanic's lien holder was noticed of this motion; thus, the court will make no findings regarding the claim of either, whether for the purpose of affecting the mechanic's lienholders' claims themselves or for the purpose of valuing the claims of the judgment lienholders.

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

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1 All statutory references are to the Bankruptcy Code, Title 11, United States Code.

2 Although the moving papers identify L. A. Commercial as holding a lien arising out of a judgment, they do not mention a claim of exemption, and there is no indication the debtor is seeking to avoid L. A. Commercial's judgment lien pursuant to § 522(f).

3 The reference to "all of the respondents" is to L. A. Commercial and four other judgment lienholders whose secured claims the debtor also seeks to value. See DC Nos. RJ-3, -4, -5, and -6, also on this calendar.

4 There is insufficient evidence in the record to enable the court to put the five judgment liens in order of their priority as liens against the property. The debtor does not testify to the dates of recordation of the abstracts of judgment, and no copies of the abstracts have been filed. Although the debtor has submitted a copy of a preliminary title report, three of the judgment liens are not listed in that report. The debtor's Schedule D lists dates for four of the judgment liens, but not the fifth, and the court cannot even be sure the dates listed are the actual recording dates because the schedule lists two of the liens as "10th" and "11th," whereas the dates shown would support the reverse order.

5 As to the IRS's claim, the motion states, "a proper analysis of claim 2 filed in this case would place the actual secured claim at $58,257.07." Mot. at 2:23-25. As to the Franchise Tax Board's claim, the motion states, "[t]he potential secured claim of Franchise tax board is higher, at $29,066.00 in the event there are overbids at the eventual hearing approving the sale." Id. at 3:6-8.

32. 13-92099-D-13 LINDA VAUGHAN — MOTION TO VALUE COLLATERAL OF CREDIT BUREAU OF SANTA MARIA
RJ-3 — 2-11-14 [52]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtor's motion to value collateral of Credit Bureau of Santa Maria ("Credit Bureau"). The motion was brought pursuant to LBR 9014-1(f)(2); however, regardless as to whether the motion is opposed, the court is not prepared to grant the relief requested.

The court intends to deny the motion for several reasons. First, the motion does not clearly indicate the purpose for which the valuation is sought; thus, it fails to provide sufficient information to enable the potential respondent to determine whether to oppose the motion. Second, it appears the motion is premature.

The moving papers do not mention any particular section of the Bankruptcy Code or other authority under which the valuation is sought. However, it appears § 506(a)[1] is the only statutory authority that could apply to the relief sought. The motion states that it "seeks to establish that the secured claim is $0.00 after taking into account Senior liens." Motion to Value, filed Feb. 11, 2014 ("Mot."), at 1:28-2:1.[2] That suggests the debtor is relying on § 506(a). Pursuant to that subsection, the value of a creditor's interest in the estate's interest in property "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." § 506(a). Here, the moving papers do not clearly indicate the proposed disposition or use of the property by the debtor, and the motion is not being heard in conjunction with a hearing on the debtor's proposed chapter 13 plan.

The motion refers indirectly to a possible sale of the property, as follows: "Unless there is significant overbidding at the court hearing on the sale of the collateral, all of the respondents will receive nothing." Mot. at 4:4-6.[3] The debtor's supporting declaration adds: "I do not preclude the possibility of overbidding on the eventual motion allowing sale of the property . . . ." Debtor's Declaration, filed Feb. 11, 2014 ("Decl."), at 4:19-21. A review of the debtor's proposed chapter 13 plan indicates the debtor does indeed intend a sale of the property, which she predicts will occur within six months. Thus, the proposed disposition of the property is a sale, and the valuation of Credit Bureau's secured claim would be for the purpose of a sale. For that purpose, the court would determine the value of the property, and hence, the value of Credit Bureau's secured claim, based on what the buyer proposes to pay for the property, including the price any successful overbidder offers to pay, assuming an arm's-length transaction after the property has been exposed to the market for a reasonable period of time. The court would determine the value of the property only at the time of sale, in conjunction with a motion to approve the sale. Thus, the present motion will be denied as premature.

Third, assuming the moving papers had included sufficient information to inform the potential respondent of the purpose for which the valuation is sought, and assuming the court were presented with a motion to sell the property at the value asserted by the debtor, $545,000 (with satisfactory evidence of an arm's-length transaction after exposure to the market), it does not appear the debtor is entitled to the relief requested. The debtor seeks to establish that the value of the property is $545,000, and that the value of Credit Bureau's secured claim is $0, taking into account senior liens against the property. However, the senior liens the amounts of which are clearly stated (the three deeds of trust) total only $483,500, leaving $61,500 in value available to secure the judgment lien of Credit Bureau and/or one or more of the other four judgment liens against the property.[4]

The amount of available equity may be even higher. The debtor's supporting declaration states as follows, regarding the value of the property: "On the November 27, 2013 petition date, the value of the realty commonly known as [address] was scheduled at $545,000.00. I hereby reiterate that petition date valuation." Decl. at 2:22-25. Turning, then, to the debtor's Schedule A, the debtor listed the

value of the property at $545,000, with the following qualification: "Potential sale price as much as $590,000, from that deduct commissions and bankruptcy case administrative costs, and assessments against the property which are senior to the fully secured Deeds of Trust." Assuming the deduction of costs of sale is appropriate in this situation despite the holding of Taffi v. United States (In re Taffi), 68 F.3d 306, 310 (9th Cir. 1995), the debtor has submitted no authority for the proposition that judgment lienholders should be subordinate to bankruptcy administrative claims, and there is no indication in the record of "assessments" senior to the deeds of trust.

The debtor attempts to show the senior liens against the property as greater than $483,500, and it appears they may be, but not by as much as the debtor contends. The IRS and the Franchise Tax Board have filed secured claims in this case for $8,290 and $3,356, respectively, for a total of $11,646. The debtor or her counsel attempts to inflate those figures, with no support or analysis, and the debtor has not formally challenged those claims.[5] Thus, the proofs of claim stand as prima facie evidence of their amounts (Fed. R. Bankr. P. 3001(f)), and assuming the other problems with the motion discussed above were corrected, the court would deny the motion to whatever extent it depended on the debtor's unsupported allegations as to the amounts of the IRS's and Franchise Tax Board's secured claims.

Finally, the motion refers to two alleged mechanic's liens, stating as to each: "It appears that this lien should be construed as having expired." Mot. at 3:14-15, 3:25-26. Neither mechanic's lien holder was noticed of this motion; thus, the court will make no findings regarding the claim of either, whether for the purpose of affecting the mechanic's lienholders' claims themselves or for the purpose of valuing the claims of the judgment lienholders.

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

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1 All statutory references are to the Bankruptcy Code, Title 11, United States Code.

2 Although the moving papers identify Credit Bureau as holding a lien arising out of a judgment, they do not mention a claim of exemption, and there is no indication the debtor is seeking to avoid Credit Bureau's judgment lien pursuant to § 522(f).

3 The reference to "all of the respondents" is to Credit Bureau and four other judgment lienholders whose secured claims the debtor also seeks to value. See DC Nos. RJ-2, -4, -5, and -6, also on this calendar.

4 There is insufficient evidence in the record to enable the court to put the five judgment liens in order of their priority as liens against the property. The debtor does not testify to the dates of recordation of the abstracts of judgment, and no copies of the abstracts have been filed. Although the debtor has submitted a copy of a preliminary title report, three of the judgment liens are not listed in that report. The debtor's Schedule D lists dates for four of the judgment liens, but not the fifth, and the court cannot even be sure the dates listed are the actual recording dates because the schedule lists two of the liens as "10th" and "11th," whereas the dates shown would support the reverse order.

5 As to the IRS's claim, the motion states, "a proper analysis of claim 2 filed

in this case would place the actual secured claim at $58,257.07." Mot. at 2:23-25. As to the Franchise Tax Board's claim, the motion states, "[t]he potential secured claim of Franchise tax board is higher, at $29,066.00 in the event there are overbids at the eventual hearing approving the sale." Id. at 3:6-8.

33. 13-92099-D-13 LINDA VAUGHAN — MOTION TO VALUE COLLATERAL OF DEPARTMENT OF LABOR
RJ-4 — 2-11-14 [57]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtor's motion to value collateral of the Department of Labor (the "Department") (identified in the preliminary title report filed as an exhibit as the Labor Commissioner of the State of California). The motion was brought pursuant to LBR 9014-1(f)(2); however, regardless as to whether the motion is opposed, the court is not prepared to grant the relief requested.

The court intends to deny the motion for several reasons. First, the motion does not clearly indicate the purpose for which the valuation is sought; thus, it fails to provide sufficient information to enable the potential respondent to determine whether to oppose the motion. Second, it appears the motion is premature.

The moving papers do not mention any particular section of the Bankruptcy Code or other authority under which the valuation is sought. However, it appears § 506(a)[1] is the only statutory authority that could apply to the relief sought. The motion states that it "seeks to establish that the secured claim is $0.00 after taking into account Senior liens." Motion to Value, filed Feb. 11, 2014 ("Mot."), at 1:28-2:1.[2] That suggests the debtor is relying on § 506(a). Pursuant to that subsection, the value of a creditor's interest in the estate's interest in property "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." § 506(a). Here, the moving papers do not clearly indicate the proposed disposition or use of the property by the debtor, and the motion is not being heard in conjunction with a hearing on the debtor's proposed chapter 13 plan.

The motion refers indirectly to a possible sale of the property, as follows: "Unless there is significant overbidding at the court hearing on the sale of the collateral, all of the respondents will receive nothing." Mot. at 4:4-6.[3] The debtor's supporting declaration adds: "I do not preclude the possibility of overbidding on the eventual motion allowing sale of the property . . . ." Debtor's Declaration, filed Feb. 11, 2014 ("Decl."), at 4:19-21. A review of the debtor's proposed chapter 13 plan indicates the debtor does indeed intend a sale of the property, which she predicts will occur within six months. Thus, the proposed disposition of the property is a sale, and the valuation of the Department's secured claim would be for the purpose of a sale. For that purpose, the court would determine the value of the property, and hence, the value of the Department's secured claim, based on what the buyer proposes to pay for the property, including the price any successful overbidder offers to pay, assuming an arm's-length transaction after the property has been exposed to the market for a reasonable period of time. The court would determine the value of the property only at the time of sale, in conjunction with a motion to approve the sale. Thus, the present motion will be denied as premature.

Third, assuming the moving papers had included sufficient information to inform the potential respondent of the purpose for which the valuation is sought, and assuming the court were presented with a motion to sell the property at the value asserted by the debtor, $545,000 (with satisfactory evidence of an arm's-length transaction after exposure to the market), it does not appear the debtor is entitled to the relief requested. The debtor seeks to establish that the value of the property is $545,000, and that the value of the Department's secured claim is $0, taking into account senior liens against the property. However, the senior liens the amounts of which are clearly stated (the three deeds of trust) total only $483,500, leaving $61,500 in value available to secure the judgment lien of the Department and/or one or more of the other four judgment liens against the property.[4]

The amount of available equity may be even higher. The debtor's supporting declaration states as follows, regarding the value of the property: "On the November 27, 2013 petition date, the value of the realty commonly known as [address] was scheduled at $545,000.00. I hereby reiterate that petition date valuation." Decl. at 2:22-25. Turning, then, to the debtor's Schedule A, the debtor listed the value of the property at $545,000, with the following qualification: "Potential sale price as much as $590,000, from that deduct commissions and bankruptcy case administrative costs, and assessments against the property which are senior to the fully secured Deeds of Trust." Assuming the deduction of costs of sale is appropriate in this situation despite the holding of Taffi v. United States (In re Taffi), 68 F.3d 306, 310 (9th Cir. 1995), the debtor has submitted no authority for the proposition that judgment lienholders should be subordinate to bankruptcy administrative claims, and there is no indication in the record of "assessments" senior to the deeds of trust.

The debtor attempts to show the senior liens against the property as greater than $483,500, and it appears they may be, but not by as much as the debtor contends. The IRS and the Franchise Tax Board have filed secured claims in this case for $8,290 and $3,356, respectively, for a total of $11,646. The debtor or her counsel attempts to inflate those figures, with no support or analysis, and the debtor has not formally challenged those claims.[5] Thus, the proofs of claim stand as prima facie evidence of their amounts (Fed. R. Bankr. P. 3001(f)), and assuming the other problems with the motion discussed above were corrected, the court would deny the motion to whatever extent it depended on the debtor's unsupported allegations as to the amounts of the IRS's and Franchise Tax Board's secured claims.

Finally, the motion refers to two alleged mechanic's liens, stating as to each: "It appears that this lien should be construed as having expired." Mot. at 3:14-15, 3:25-26. Neither mechanic's lien holder was noticed of this motion; thus, the court will make no findings regarding the claim of either, whether for the purpose of affecting the mechanic's lienholders' claims themselves or for the purpose of valuing the claims of the judgment lienholders.

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

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1 All statutory references are to the Bankruptcy Code, Title 11, United States Code.

2 Although the moving papers identify the Department as holding a lien arising out of a judgment, they do not mention a claim of exemption, and there is no indication the debtor is seeking to avoid the Department's judgment lien pursuant to § 522(f).

3 The reference to "all of the respondents" is to the Department and four other judgment lienholders whose secured claims the debtor also seeks to value. See DC Nos. RJ-2, -3, -5, and -6, also on this calendar.

4 There is insufficient evidence in the record to enable the court to put the five judgment liens in order of their priority as liens against the property. The debtor does not testify to the dates of recordation of the abstracts of judgment, and no copies of the abstracts have been filed. Although the debtor has submitted a copy of a preliminary title report, three of the judgment liens are not listed in that report. The debtor's Schedule D lists dates for four of the judgment liens, but not the fifth, and the court cannot even be sure the dates listed are the actual recording dates because the schedule lists two of the liens as "10th" and "11th," whereas the dates shown would support the reverse order.

5 As to the IRS's claim, the motion states, "a proper analysis of claim 2 filed in this case would place the actual secured claim at $58,257.07." Mot. at 2:23-25. As to the Franchise Tax Board's claim, the motion states, "[t]he potential secured claim of Franchise tax board is higher, at $29,066.00 in the event there are overbids at the eventual hearing approving the sale." Id. at 3:6-8.

34.	13-92099-D-13 RJ-5	LINDA VAUGHAN	MOTION TO VALUE COLLATERAL OF STEVEN BUDROW 2-11-14 [62]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtor's motion to value collateral of Steven Budrow ("Budrow"). The motion was brought pursuant to LBR 9014-1(f)(2); however, regardless as to whether the motion is opposed, the court is not prepared to grant the relief requested.

The court intends to deny the motion for several reasons. First, the motion does not clearly indicate the purpose for which the valuation is sought; thus, it fails to provide sufficient information to enable the potential respondent to determine whether to oppose the motion. Second, it appears the motion is premature.

The moving papers do not mention any particular section of the Bankruptcy Code or other authority under which the valuation is sought. However, it appears § 506(a)[1] is the only statutory authority that could apply to the relief sought. The motion states that it "seeks to establish that the secured claim is $0.00 after taking into account Senior liens." Motion to Value, filed Feb. 11, 2014 ("Mot."), at 1:28-2:1.[2] That suggests the debtor is relying on § 506(a). Pursuant to that subsection, the value of a creditor's interest in the estate's interest in property "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." § 506(a). Here, the moving papers do not clearly indicate the proposed disposition or use of the property by the debtor, and the motion is not being heard in conjunction with a hearing on the debtor's proposed chapter 13 plan.

The motion refers indirectly to a possible sale of the property, as follows: "Unless there is significant overbidding at the court hearing on the sale of the collateral, all of the respondents will receive nothing." Mot. at 4:4-6.[3] The debtor's supporting declaration adds: "I do not preclude the possibility of overbidding on the eventual motion allowing sale of the property . . . ." Debtor's Declaration, filed Feb. 11, 2014 ("Decl."), at 4:19-21. A review of the debtor's proposed chapter 13 plan indicates the debtor does indeed intend a sale of the property, which she predicts will occur within six months. Thus, the proposed disposition of the property is a sale, and the valuation of Budrow's secured claim would be for the purpose of a sale. For that purpose, the court would determine the value of the property, and hence, the value of Budrow's secured claim, based on what the buyer proposes to pay for the property, including the price any successful overbidder offers to pay, assuming an arm's-length transaction after the property has been exposed to the market for a reasonable period of time. The court would determine the value of the property only at the time of sale, in conjunction with a motion to approve the sale. Thus, the present motion will be denied as premature.

Third, assuming the moving papers had included sufficient information to inform the potential respondent of the purpose for which the valuation is sought, and assuming the court were presented with a motion to sell the property at the value asserted by the debtor, $545,000 (with satisfactory evidence of an arm's-length transaction after exposure to the market), it does not appear the debtor is entitled to the relief requested. The debtor seeks to establish that the value of the property is $545,000, and that the value of Budrow's secured claim is $0, taking into account senior liens against the property. However, the senior liens the amounts of which are clearly stated (the three deeds of trust) total only $483,500, leaving $61,500 in value available to secure the judgment lien of Budrow and/or one or more of the other four judgment liens against the property.[4]

The amount of available equity may be even higher. The debtor's supporting declaration states as follows, regarding the value of the property: "On the November 27, 2013 petition date, the value of the realty commonly known as [address] was scheduled at $545,000.00. I hereby reiterate that petition date valuation." Decl. at 2:22-25. Turning, then, to the debtor's Schedule A, the debtor listed the value of the property at $545,000, with the following qualification: "Potential sale price as much as $590,000, from that deduct commissions and bankruptcy case administrative costs, and assessments against the property which are senior to the fully secured Deeds of Trust." Assuming the deduction of costs of sale is appropriate in this situation despite the holding of Taffi v. United States (In re Taffi), 68 F.3d 306, 310 (9th Cir. 1995), the debtor has submitted no authority for the proposition that judgment lienholders should be subordinate to bankruptcy administrative claims, and there is no indication in the record of "assessments" senior to the deeds of trust.

The debtor attempts to show the senior liens against the property as greater than $483,500, and it appears they may be, but not by as much as the debtor contends. The IRS and the Franchise Tax Board have filed secured claims in this case for $8,290 and $3,356, respectively, for a total of $11,646. The debtor or her counsel attempts to inflate those figures, with no support or analysis, and the debtor has not formally challenged those claims.[5] Thus, the proofs of claim stand as prima facie evidence of their amounts (Fed. R. Bankr. P. 3001(f)), and assuming the other problems with the motion discussed above were corrected, the court would deny the motion to whatever extent it depended on the debtor's unsupported allegations as to the amounts of the IRS's and Franchise Tax Board's secured claims.

Finally, the motion refers to two alleged mechanic's liens, stating as to each: "It appears that this lien should be construed as having expired." Mot. at 3:14-15, 3:25-26. Neither mechanic's lien holder was noticed of this motion; thus, the court will make no findings regarding the claim of either, whether for the purpose of affecting the mechanic's lienholders' claims themselves or for the purpose of valuing the claims of the judgment lienholders.

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

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1 All statutory references are to the Bankruptcy Code, Title 11, United States Code.

2 Although the moving papers identify Budrow as holding a lien arising out of a judgment, they do not mention a claim of exemption, and there is no indication the debtor is seeking to avoid L. A. Budrow's judgment lien pursuant to § 522(f).

3 The reference to "all of the respondents" is to Budrow and four other judgment lienholders whose secured claims the debtor also seeks to value. See DC Nos. RJ-2, -3, -4, and -6, also on this calendar.

4 There is insufficient evidence in the record to enable the court to put the five judgment liens in order of their priority as liens against the property. The debtor does not testify to the dates of recordation of the abstracts of judgment, and no copies of the abstracts have been filed. Although the debtor has submitted a copy of a preliminary title report, three of the judgment liens are not listed in that report. The debtor's Schedule D lists dates for four of the judgment liens, but not the fifth, and the court cannot even be sure the dates listed are the actual recording dates because the schedule lists two of the liens as "10th" and "11th," whereas the dates shown would support the reverse order.

5 As to the IRS's claim, the motion states, "a proper analysis of claim 2 filed in this case would place the actual secured claim at $58,257.07." Mot. at 2:23-25. As to the Franchise Tax Board's claim, the motion states, "[t]he potential secured claim of Franchise tax board is higher, at $29,066.00 in the event there are overbids at the eventual hearing approving the sale." Id. at 3:6-8.

35. 13-92099-D-13 LINDA VAUGHAN — MOTION TO VALUE COLLATERAL OF WILLIAM STEGNER
RJ-6 — 2-11-14 [67]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtor's motion to value collateral of William Stegner ("Stegner"). The motion was brought pursuant to LBR 9014-1(f)(2); however, regardless as to whether the motion is opposed, the court is not prepared to grant the relief requested.

The court intends to deny the motion for several reasons. First, the motion does not clearly indicate the purpose for which the valuation is sought; thus, it fails to provide sufficient information to enable the potential respondent to determine whether to oppose the motion. Second, it appears the motion is premature.

The moving papers do not mention any particular section of the Bankruptcy Code or other authority under which the valuation is sought. However, it appears § 506(a)[1] is the only statutory authority that could apply to the relief sought. The motion states that it "seeks to establish that the secured claim is $0.00 after taking into account Senior liens." Motion to Value, filed Feb. 11, 2014 ("Mot."), at 1:28-2:1.[2] That suggests the debtor is relying on § 506(a). Pursuant to that subsection, the value of a creditor's interest in the estate's interest in property "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." § 506(a). Here, the moving papers do not clearly indicate the proposed disposition or use of the property by the debtor, and the motion is not being heard in conjunction with a hearing on the debtor's proposed chapter 13 plan.

The motion refers indirectly to a possible sale of the property, as follows: "Unless there is significant overbidding at the court hearing on the sale of the collateral, all of the respondents will receive nothing." Mot. at 4:4-6.[3] The debtor's supporting declaration adds: "I do not preclude the possibility of overbidding on the eventual motion allowing sale of the property . . . ." Debtor's Declaration, filed Feb. 11, 2014 ("Decl."), at 4:19-21. A review of the debtor's proposed chapter 13 plan indicates the debtor does indeed intend a sale of the property, which she predicts will occur within six months. Thus, the proposed disposition of the property is a sale, and the valuation of Stegner's secured claim would be for the purpose of a sale. For that purpose, the court would determine the value of the property, and hence, the value of Stegner's secured claim, based on what the buyer proposes to pay for the property, including the price any successful overbidder offers to pay, assuming an arm's-length transaction after the property has been exposed to the market for a reasonable period of time. The court would determine the value of the property only at the time of sale, in conjunction with a motion to approve the sale. Thus, the present motion will be denied as premature.

Third, assuming the moving papers had included sufficient information to inform the potential respondent of the purpose for which the valuation is sought, and assuming the court were presented with a motion to sell the property at the value asserted by the debtor, $545,000 (with satisfactory evidence of an arm's-length transaction after exposure to the market), it does not appear the debtor is entitled to the relief requested. The debtor seeks to establish that the value of the property is $545,000, and that the value of Stegner's secured claim is $0, taking into account senior liens against the property. However, the senior liens the amounts of which are clearly stated (the three deeds of trust) total only $483,500, leaving $61,500 in value available to secure the judgment lien of Stegner and/or one or more of the other four judgment liens against the property.[4]

The amount of available equity may be even higher. The debtor's supporting declaration states as follows, regarding the value of the property: "On the November 27, 2013 petition date, the value of the realty commonly known as [address] was scheduled at $545,000.00. I hereby reiterate that petition date valuation." Decl. at 2:22-25. Turning, then, to the debtor's Schedule A, the debtor listed the value of the property at $545,000, with the following qualification: "Potential sale price as much as $590,000, from that deduct commissions and bankruptcy case administrative costs, and assessments against the property which are senior to the fully secured Deeds of Trust." Assuming the deduction of costs of sale is appropriate in this situation despite the holding of Taffi v. United States (In re Taffi), 68 F.3d 306, 310 (9th Cir. 1995), the debtor has submitted no authority for

the proposition that judgment lienholders should be subordinate to bankruptcy administrative claims, and there is no indication in the record of "assessments" senior to the deeds of trust.

The debtor attempts to show the senior liens against the property as greater than $483,500, and it appears they may be, but not by as much as the debtor contends. The IRS and the Franchise Tax Board have filed secured claims in this case for $8,290 and $3,356, respectively, for a total of $11,646. The debtor or her counsel attempts to inflate those figures, with no support or analysis, and the debtor has not formally challenged those claims.[5] Thus, the proofs of claim stand as prima facie evidence of their amounts (Fed. R. Bankr. P. 3001(f)), and assuming the other problems with the motion discussed above were corrected, the court would deny the motion to whatever extent it depended on the debtor's unsupported allegations as to the amounts of the IRS's and Franchise Tax Board's secured claims.

Finally, the motion refers to two alleged mechanic's liens, stating as to each: "It appears that this lien should be construed as having expired." Mot. at 3:14-15, 3:25-26. Neither mechanic's lien holder was noticed of this motion; thus, the court will make no findings regarding the claim of either, whether for the purpose of affecting the mechanic's lienholders' claims themselves or for the purpose of valuing the claims of the judgment lienholders.

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

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1 All statutory references are to the Bankruptcy Code, Title 11, United States Code.

2 Although the moving papers identify Stegner as holding a lien arising out of a judgment, they do not mention a claim of exemption, and there is no indication the debtor is seeking to avoid Stegner's judgment lien pursuant to § 522(f).

3 The reference to "all of the respondents" is to Stegner and four other judgment lienholders whose secured claims the debtor also seeks to value. See DC Nos. RJ-2, -3, -4, and -5, also on this calendar.

4 There is insufficient evidence in the record to enable the court to put the five judgment liens in order of their priority as liens against the property. The debtor does not testify to the dates of recordation of the abstracts of judgment, and no copies of the abstracts have been filed. Although the debtor has submitted a copy of a preliminary title report, three of the judgment liens are not listed in that report. The debtor's Schedule D lists dates for four of the judgment liens, but not the fifth, and the court cannot even be sure the dates listed are the actual recording dates because the schedule lists two of the liens as "10th" and "11th," whereas the dates shown would support the reverse order.

5 As to the IRS's claim, the motion states, "a proper analysis of claim 2 filed in this case would place the actual secured claim at $58,257.07." Mot. at 2:23-25. As to the Franchise Tax Board's claim, the motion states, "[t]he potential secured claim of Franchise tax board is higher, at $29,066.00 in the event there are overbids at the eventual hearing approving the sale." Id. at 3:6-8.