UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 6, 2015 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. 14-26801-D-13 RANDY/ROSANN SAN NICOLAS MOTION TO CONFIRM PLAN
CJY-2 11-21-14 [33]

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. 12-28604-D-13 WILLIAM/GINA CRONIN — CONTINUED MOTION TO MODIFY PLAN
DCJ-6 — 10-21-14 [111]

3. 14-28507-D-13 SADDI/SHAUNNA SIMON — MOTION TO CONFIRM PLAN
SJS-1 — 11-11-14 [27]

4. 14-28408-D-13 JOAQUIN/MARTHA RAMON — MOTION TO CONFIRM PLAN
TOG-4 — 11-7-14 [40]

5. 14-26310-D-13 TRISHA JANEWAY — MOTION TO CONFIRM PLAN
SJS-1 — 11-6-14 [34]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the debtor failed to serve Waterstone Apartments, listed on her Schedule G. Minimal research into the case law concerning § 101(5) and (10) of the Code discloses an extremely broad interpretation of "creditor," certainly one including parties to leases with the debtor. Thus, Waterstone Apartments should have been listed on the debtor's master address list (Fed. R. Bankr. P. 1007(a)(1)), and should have been served with this motion (Fed. R. Bankr. P. 2002(b)).

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

6. 14-28610-D-13 HWW-3 — WAYNE FLORES AND VAN ASHLEY-FLORES — MOTION TO CONFIRM PLAN 11-17-14 [36]

CASE DISMISSED 11/14/14 AS TO VAN ASHLEY-FLORES

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the debtor failed to serve Kay Jewelers, listed on his Schedule D, and failed to serve Dorothy Healy, listed on his Schedule F. The debtor indicated on his Schedule F that Dorothy Healy appears on the schedule as a "precautionary listing." It is difficult to understand what was "precautionary" about the listing when the individual listed was not included on the master address list or served with this motion.

The debtor listed Dorothy Healy on Schedule F as being the debtor's landlord under a month-to-month lease; it is apparently for this reason that the debtor did not include Ms. Healy on his master address list. However, minimal research into the case law concerning § 101(5) and (10) of the Code discloses an extremely broad interpretation of "creditor," certainly one including parties to leases with the debtor, even month-to-month leases. Thus, Dorothy Healy should have been listed on the master address list (Fed. R. Bankr. P. 1007(a)(1)), and should have been served with this motion (Fed. R. Bankr. P. 2002(b)).

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

7. 14-30410-D-13 RDG-3 — JEFF CANDELARIO — OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE RUSSELL D. GREER 12-5-14 [32]

Final ruling:

This case was dismissed on December 18, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

8. 14-30410-D-13 TJS-1 — JEFF CANDELARIO — OBJECTION TO CONFIRMATION OF PLAN BY PENNYMAC HOLDINGS, LLC 12-10-14 [35]

Final ruling:

This case was dismissed on December 18, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

9. 14-30012-D-13 SEN NGUYEN AND EN CU — MOTION TO VALUE COLLATERAL OF PNC BANK, N.A.
MJH-2 — 11-20-14 [22]

Final ruling:

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

10. 14-30013-D-13 ALICIA SANTOS — MOTION TO VALUE COLLATERAL OF HSBC USA BANK, N.A.
MJH-2 — 11-20-14 [23]

Final ruling:

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

11. 14-26614-D-13 VALERIA LABORDE — CONTINUED MOTION TO RECONVERT CASE FROM CHAPTER 13 TO CHAPTER 7
RDG-3 — 11-4-14 [50]

12. 11-22818-D-13 CHRISTOPHER/DIANE THOMAS — MOTION TO MODIFY PLAN
CJY-1 — 11-21-14 [35]

13. 14-30426-D-13 RODEL/EMMALYN PACRING
RDG-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE RUSSELL D. GREER
12-5-14 [17]

14. 14-29931-D-13 LISA ROCHA
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-24-14 [22]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response has been filed. The objection is supported by the record. The court will sustain the trustee's objection to claim of exemptions. Moving party is to submit an appropriate order. No appearance is necessary.

15. 11-41232-D-13 MICHAEL/KATHLEEN COLLINS
JCK-4

MOTION TO MODIFY PLAN
11-21-14 [46]

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.

16. 14-25132-D-13 KAREN CLEARY
RLG-5

MOTION TO CONFIRM PLAN
11-25-14 [75]

17. 14-26232-D-13 ADAM/SANDRA LEIGHTON
BSH-4

MOTION TO VALUE COLLATERAL OF ONE MAIN FINANCIAL
11-20-14 [92]

18. 14-26232-D-13 ADAM/SANDRA LEIGHTON
BSH-5

MOTION TO VALUE COLLATERAL OF GM FINANCIAL
11-20-14 [97]

19. 14-31633-D-13 CRAIG VINCENT
JCK-1

MOTION TO VALUE COLLATERAL OF OPERATING ENGINEERS FEDERAL CREDIT UNION
12-5-14 [8]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Operating Engineers Federal Credit Union 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 Operating Engineers Federal Credit Union's secured claim at $0.00 by minute order. No further relief will be afforded. No appearance is necessary.

20. 14-31634-D-13 WILLARD/PATRICIA MAYNARD
JCK-1

MOTION TO VALUE COLLATERAL OF ACCEPTANCE NOW
12-5-14 [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.

21. 14-23842-D-13 ANGELA WARREN-BASS — AMENDED MOTION TO CONFIRM PLAN
JCK-5 — 11-22-14 [92]

22. 14-23843-D-13 ELVIN/HURLENE BAKER — AMENDED MOTION TO MODIFY PLAN
JCK-2 — 11-26-14 [45]

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.

23. 14-27445-D-13 PETER/LORI KOULOURIS — CONTINUED AMENDED ORDER TO SHOW CAUSE
10-23-14 [38]

Tentative ruling:

This is a continued hearing on the court's amended order to show cause, filed October 23, 2014 (the "OSC") directed at debtors Peter T. Koulouris and Lori F. Koulouris (the "debtors"). The debtors filed responses to the OSC on November 7, 2014. The court then continued the December 2, 2014 hearing to this date and issued a ruling directing the debtors to file supplemental responses, which they have done. The OSC, which is on the court's docket at DN 38, and the ruling continuing the hearing, at DN 64, are incorporated herein.

In the OSC, the court detailed a large number of facial inconsistencies and apparent omissions in the petitions, schedules, and statements of financial affairs filed by the debtors in this case and by one or both of them in three other bankruptcy cases filed in 1999 and 2010. (Both debtors were debtors in the 1999 case; Peter was the debtor in the two 2010 cases; Lori was his attorney.[1]) The court concluded in the OSC that it appeared the debtors had filed materially false petitions, schedules, and statements of affairs, despite the fact that both are experienced bankruptcy attorneys and hold themselves out as such to the public. The OSC required the debtors to file responses signed under oath covering the facts it appeared should have been disclosed on the petition and in their schedules and statement of affairs filed in this case, to state under oath whether the schedules and statement of affairs were accurate and complete as filed, and if not, to state why, and to provide all information necessary to make them accurate and complete.

In response, the debtors admitted that their schedules and statement of affairs as filed in this case were not accurate and complete; they testified under oath that "[a] working draft copy of the petition was mistakenly scanned and filed in error instead of the completed signed petition." Response to OSC, filed Nov. 7, 2014, at 1:19-20. They claimed this was "due to the rush to file the petition in time to prevent the foreclosure of [their] real property . . ." (id. at 1:20-21), adding:

> Our filing was neither improper nor intended to harass or cause unnecessary delay to anyone, but rather a very terrible error that on the surface appears as if it were filed for an improper purpose. Our purposes [to pay mortgage arrears and address back taxes] were legitimate and proper and we regret the confusion resulting from filing our petition in such haste.

Id. at 2:1-4. The debtors claimed they did not discover their mistake until they received the OSC.

This response is every bit as troubling to the court as the gross inaccuracies and omissions noted in the OSC. For several reasons, the notion that "working draft copies" were mistakenly scanned and filed instead of the "completed signed" versions is not remotely credible. Further, the debtors' response to the OSC, discussing confusion and surface errors, together with the debtors' conduct since this case was filed, reflects a disturbing lack of appreciation of the importance of full disclosure in bankruptcy cases and an inability or unwillingness to be affected by and respond appropriately to serious ethical questions.

The court would have to suspend disbelief entirely to accept the debtors' "draft working copy" assertion. The court would have to believe that two attorneys with years of experience [2] would have prepared even a rudimentary "working copy" of a petition on which they failed to list any of the several business names they have used in the past eight years, a preliminary version of the statement of affairs on which they failed to list the address of the property that was their residence from 2011 to 2014 (the exact period of time for which the plain language of the question required them to list all prior addresses), a preliminary version of Schedule B on which they listed a hot dog company they value at $500 but not the law practice that generates almost all their income, and a preliminary version of Schedule I on which they listed the name of their law practice as the Law Office of Lori French, whereas they now claim they stopped using that name over two and one-half years before the petition was filed.[3]

Second, the debtors referred to the "working draft" copy and the "completed signed" copy as if both existed at the same time and the wrong one was scanned and filed. However, the version that was scanned and filed included multiple signatures by both debtors, indicated by their typed names preceded by "/s/", as permitted by LBR 9004-1(c)(1)(A). By causing the scanned and filed documents to show their signatures in that fashion, the debtors agreed that those signatures constituted their signatures for all purposes, including Fed. R. Bankr. P. 9011. Id. And by their signatures, the debtors declared under the penalty of perjury not only that the information in the petition, schedules, and statement of affairs was true and correct, but also that they had read the information in the schedules and statement of affairs, which if their current story is to be believed, they had not. As bankruptcy practitioners themselves, the debtors knew better than most what their signatures on those documents meant; in allowing those versions of the petition, schedules, and statement of affairs to be filed with their signatures, the debtors made a material misrepresentation of fact.[4]

Further, the implication that the "completed signed" version was in existence when the original documents were filed, but was overlooked when it came time to file, is belied by the debtors' conduct in the several months after those documents were filed. First, although they had been bankruptcy practitioners for years, in Peter's case many years, they failed to review the documents they had just filed for accuracy and completeness. And at the meeting of creditors, two months later, having "solemnly sworn" that their testimony would be the truth, the whole truth, and nothing but the truth, they testified they had read the petition, schedules, and statements that were filed in the case, that they had reviewed them carefully, that they were familiar with the information contained in them, and that to the best of their knowledge, that information was true, complete, and accurate. Those questions are intended to impress upon bankruptcy debtors the importance of full disclosure to the operation of the entire bankruptcy system. In this instance, they did not have the desired effect.[5]

The debtors' behavior after the meeting of creditors further undermines their story that they originally filed a "working copy" accidentally. At the initial session of the meeting, which Peter attended but Lori did not due to medical issues, the trustee's counsel informed Peter he needed to amend the answer to question 18 of the statement of affairs. That question requires debtors to list by name, address, taxpayer ID number, nature of the business, and beginning and ending dates, all businesses in which they have been an officer, director, partner, sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time, in the six years prior to the bankruptcy filing. That the debtors could have read that question and, as bankruptcy attorneys, been thoroughly familiar with it, but answered it "None," even in a "working copy," is not believable.[6] However, even after the trustee's attorney pointed out the debtors needed to amend their answer to disclose their law practice, they did not do so.

At the continued meeting of creditors, which both Peter and Lori attended, Peter and the trustee's attorney each pointed out certain corrections that needed to be made to the debtors' schedules, yet the debtors still filed no amended schedules and no amended statement of affairs until they filed their responses to the OSC, and even then, they failed to make a large number of changes they finally made with the supplemental responses the court required after the initial hearing. Thus, the debtors never voluntarily amended the petition, schedules, or statement of affairs.[7] The court concludes that the accurate and complete versions, assuming the most recent ones are so, would never have been filed and full disclosure would never have been made without the court's intervention by way of the OSC.

And as already indicated, even that was not sufficient: full disclosure was not made and would not have been made (if in fact the most recent versions are accurate and complete) without the subsequent December 2, 2014 ruling. With their initial responses to the OSC, the debtors submitted an amended petition, amended Schedules D, E, and F, and an amended statement of affairs.[8] They testified in their declarations in response to the OSC that the exhibits contained "any and all information necessary to make [the schedules and statement of affairs] accurate and complete as of this date." Responses, filed Nov. 7, 2014, at ¶¶ 11, 12. That statement was not true. The amended documents still contained the answer "None" to question 18, still omitted a prior case where required to be listed on page 2 of the petition

(Case No. 10-29779), and still omitted a creditor named Stone from the creditor schedules. The court had addressed all of these points in the OSC; the debtors simply ignored them.[9]

Further, the amended statement of affairs filed as an exhibit on November 7, 2014 still omitted the following, which were not added until December 18, 2014, in the second amended version: (1) $58,465 in gross revenues in 2013 from the hot dog company; (2) $7,346 in gross revenues in 2014 from the hot dog company; (3) the three businesses the debtors have operated in the past six years, the Law Office of Lori French, Stockton Law Center, LLP, and Mudville Hot Dog Company, LLP; and (4) the debtors' co-owner in the hot dog company, who owns 12.5%.[10] On December 18, 2014, the debtors also added the following on an amended Schedule B: (1) balance in their business checking account, $2,640 (listed as $100 on their original Schedule B); (2) a GMAC retirement pension, not vested; (3) 100% ownership of Stockton Law Center, LLP; (3) accounts receivable of $2,000; and (4) an expected tax refund of $1,729. In an amended Schedule G, they added the names and addresses of two parties to leases, one residential and one commercial. The debtors did not disclose any of these items in the exhibits filed November 7, 2014, exhibits that, they had testified under oath in the face of the OSC, included "any and all information necessary" to make the schedules and statement of affairs "accurate and complete."

Finally, the December 2, 2014 ruling required the debtors to state whether the schedules and statement of affairs filed in Peter's two 2010 cases, in which he was represented by Lori, were accurate and complete, and if not, to provide all information needed to make them so, and to state why they were not accurate and complete as filed. The debtors filed declarations on December 18, 2014 in which Lori claims that Peter prepared the bankruptcy paperwork in those two cases himself, and that before she signed the petitions in those cases, she asked Peter if he had reviewed the information thoroughly and if the information was accurate and complete. For some reason, Peter chose to address Case No. 10-33110 only in his declaration, making no mention of Case No. 10-29779. He claimed the information in the schedules was mostly complete and accurate, but he added a good deal of information about his and Lori's income in the prior two years. (The statement of affairs he filed in Case No. 10-33110 had left blanks for all of their business income, and he never amended it to disclose any of that income.) Notably, in their December 18, 2014 declarations, both Peter and Lori failed to comply with the court's directive that they explain why the schedules and statements in the 2010 cases were not accurate and complete. Perhaps they believed the "working copy" story would not pass muster again.

From the foregoing, the court concludes that the debtors filed the signed petition, schedules, and statement of affairs in this case knowing they were inaccurate, incomplete, and misleading, that they did so for an improper purpose; namely, to keep the names under which they do and had done business out of the public eye and to conceal other information they knew was required to be disclosed from the court and their creditors. The court finds the debtors' explanation of the inaccuracies and omissions in the original

documents to be self-serving, not believable, and untruthful. In their testimony at the meeting of creditors, the debtors compounded the false testimony contained in the originally filed documents. Despite being alerted by the trustee that amendments needed to be made, the debtors failed to take any action to cause their schedules and statement of affairs to be made accurate and complete. In the exhibits filed November 7, 2014 in response to the OSC, which they testified under oath rendered their schedules and statement of affairs accurate and complete, the debtors again submitted documents that were intentionally inaccurate, incomplete, and misleading. The court also concludes the debtors would never have voluntarily fully disclosed their assets, liabilities, and financial affairs in this case had the court not issued the OSC and the December 2, 2014 ruling. The debtors' initial lack of candor and accurate disclosure in the filing of the petition is only aggravated by the debtors' unbelievable assertion that the reason for the inaccuracies and omissions is that they mistakenly filed a "working draft copy" of the petition.

In light of the above findings and conclusions, the court will impose sanctions pursuant to Rule 9011 in the amount of $2,500 for each debtor. The court will hear the matter.

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1 The court will use the debtors' first names to distinguish them; no disrespect is intended thereby.

2 Peter has been attorney of record for debtors in hundreds of cases filed in this court since 1997; Lori has been attorney of record for debtors in 76 cases filed between 2009 and 2012.

3 The debtors did not manage to get their stories straight on this point in their responses to the OSC. Peter testified (under oath) the Law Office of Lori French "ceased operating on or about January 1, 2012; when Stockton Law Center LLP was formed." Peter's Response, filed Nov. 7, 2014, at 1:24-25. Lori testified (under oath) the Law Office of Lori French "ceased operating [in] May." Response of Lori, filed Nov. 7, 2014, at 1:24-25. She did not indicate the year. As the debtors have now amended their Schedule I to show the name of their practice as Stockton Law Center, LLP, the court will presume Peter's version is correct.

4 See In re Leija, 270 B.R. 497, 503 (Bankr. E.D. Cal. 2001) ["the verification itself is a material representation of fact - that the debtor had read the pleading and that the information was true and correct . . . ."].

5 The court would have expected that, as experienced bankruptcy practitioners, the debtors would be more aware than laypersons that "the viability of the system of voluntary bankruptcy depends upon full, candid, and complete disclosure by debtors of their financial affairs." Searles v. Riley (In re Searles), 317 B.R. 368, 378 (9th Cir. BAP 2004).

6 It is significant that in the debtors' first bankruptcy case, Case No. 99-93573, they answered the equivalent question in the then-version of the statement of affairs, question 16, "None," but later amended it to disclose that Peter had a law practice in Elk Grove from 1995 to the time of filing. That disclosure supports the conclusion that the debtors knew their businesses, including their law practice, were required to be disclosed in answer to question 18 in this case.

7 The large number of additions included in the versions filed most recently, on December 18, 2014, demonstrates that the versions the debtors initially filed in response to the OSC, on November 7, 2014, were not accurate or complete.

8 They did not, however, file those amended documents; they merely submitted them as exhibits under an exhibit cover sheet. The result was that, although the debtors listed their business names on the amended petition, the business names would not have been revealed in a PACER search.

9 Even the final version of the schedules, the one filed December 18, 2014, omits Stone who, as the plaintiff in a lawsuit against the debtors, is unequivocally a creditor (see § 101(5) and (10)) and should have been scheduled.

10 The debtors had expressly listed themselves as owning "100%" of the hot dog company on their original Schedule B.

24.	14-27445-D-13 RDG-3	PETER/LORI KOULOURIS	CONTINUED MOTION TO DISMISS CASE FOR UNREASONABLE DELAY THAT IS PREJUDICIAL TO CREDITORS, MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS AND/OR MOTION TO DISMISS CASE 11-4-14 [42]
25.	10-39749-D-13 EGS-1	FATEMA ASSAFI AND FARHAD ASSIFI	MOTION TO APPROVE LOAN MODIFICATION 12-1-14 [88]

26. 13-30649-D-13 JAMES VAUGHN
UST-2

MOTION FOR ENTRY OF ORDER PURSUANT TO STIPULATION
11-19-14 [26]

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 for entry of order pursuant to stipulation, which provides for attorney, Mandip Purewal, to refund $3,500 to the debtor, is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order for entry of order. No appearance is necessary.

27. 14-23451-D-13 ERNESTO/MARIA ORTEGA
TOG-6

MOTION TO CONFIRM PLAN
11-7-14 [54]

28. 14-25359-D-13 LILLIAN GLEASON
RLG-3

MOTION TO CONFIRM PLAN
11-24-14 [65]

Final ruling:

This is the debtor's motion to confirm a second amended chapter 13 plan. On December 15, 2014, the debtor filed a third amended plan. As a result of the filing of the third amended plan, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

29. 12-39365-D-13 LEO/MILDRED AINSWORTH
TBK-2

MOTION TO MODIFY PLAN
11-28-14 [34]

30. 13-24666-D-13 ROBERT PINTOR
JM-4

CONTINUED MOTION TO MODIFY PLAN
10-7-14 [66]

Final ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The court issued a tentative ruling on the motion in advance of the initial hearing, on the court's December 2, 2014 calendar. In the ruling, the court pointed out a service defect, and indicated its intent to deny the motion. The tentative ruling also stated that, in the alternative, the court would continue the hearing to one of two different dates. The ruling was entitled "Tentative ruling," and expressly concluded with these words: "The court will hear the matter." When the moving party's counsel did not appear at the December 2, 2014 hearing, the court denied the motion.

It has now come to the court's attention that the day before the hearing date, December 1, 2014, at 3:30 p.m., the moving party filed a notice of continued hearing purporting to continue the hearing to this date, January 6, 2015. Because the notice of continued hearing was filed so close in time to the time of the hearing, the court was not aware of it at the time of the hearing, and counsel failed to appear at the hearing to advise the court of the filing of the notice.

This court issues tentative rulings and final rulings, making clear in its pre-hearing dispositions which is which. When the court issues a tentative ruling, especially where, as here, the ruling includes the potential for alternative outcomes on the motion, and where, as here, one of the alternative outcomes is denial of the motion,[1] counsel for the moving party (or the moving party, if in pro se) must necessarily appear at the hearing. Where counsel does not appear, as here, he or she takes the risk that the motion will be denied, as occurred here. The motion having been denied, this matter will be removed from calendar. No appearance is necessary.

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1 The tentative ruling explicitly stated: "As a result of this service defect, the court intends to deny the motion."

31. 14-27267-D-13 SARAD/USHA CHAND
RLG-1

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 1
11-25-14 [31]

Final ruling:

This is the debtors' objection to the claim of the Internal Revenue Service ("IRS"). The IRS has filed opposition. For the following reasons, the objection will be overruled.

First, it cannot be determined which portions of the claim the debtors are objecting to. The objection refers to the secured and general unsecured portions of the claim, adding that, whereas the claim states that the tax returns for "these tax years" were not filed, the debtors have now filed their 2009, 2010, 2011, and 2013 returns. However, the secured portion of the IRS's claim does not indicate that tax returns have not been filed; thus, the court cannot discern the basis for the debtors' objection to the secured portion of the claim, if in fact they are

objecting to that portion.

Second, "[a] proof of claim executed and filed in accordance with [the Bankruptcy Rules] shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). "Upon objection, [a] proof of claim provides 'some evidence as to its validity and amount' and is 'strong enough to carry over a mere formal objection without more.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (citation omitted). "To defeat the claim, the objector must come forward with sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proof[] of claim [itself].'" Id. (citation omitted, emphasis added). As the debtors have submitted no evidence, they have failed to shift the burden of production back to the IRS. Id. (citation omitted).

As an aside, the court cautions the debtors' counsel that there are several procedural defects in the moving papers, defects that have been waived in this instance by the filing of opposition. However, for future reference, counsel should note that (1) the notice of hearing provides incorrect information about the time for filing written opposition – within 21 days of the mailing of the notice (counsel is referred to LBR 9014-1(f)(1)(B)); (2) the notice is in the nature of a hybrid of LBR 9014-1(f)(1) and (f)(2) in that it states that "if there is not a timely objection to the requested relief or appearance at a hearing, the Court may enter an order granting the relief by default," whereas a motion must be noticed as one or the other; (3) the proof of service evidences service of the objection and exhibit, but not the notice of hearing; (4) the proof of service evidences service on the IRS at only two of the three addresses required by LBR 2002-1(a) and (c); and (5) the debtors gave only 42 days' notice of the hearing, rather than 44 days', as required by LBR 3007-1(b)(1).

For the reasons stated, the objection will be overruled by minute order. No appearance is necessary.

32. 14-26468-D-13 ALICE HATTON — MOTION TO CONFIRM PLAN
DCN-3 — 11-6-14 [49]

33. 14-25673-D-13 STEVEN TUCKER — MOTION TO CONFIRM PLAN
RJ-5 — 11-25-14 [114]

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.

34. 14-30274-D-13 GABRIEL/MARIA PENA — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
RDG-1 — 12-5-14 [23]

35. 14-30274-D-13 GABRIEL/MARIA PENA — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
TOG-1 — 12-3-14 [18]

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.

36. 12-25179-D-13 LARRY/CARRIE STAMPER — MOTION TO MODIFY PLAN
JCK-5 — 11-21-14 [84]

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.

37. 12-25181-D-13 ARMANDO/CARMEN RODRIGUEZ — MOTION TO MODIFY PLAN
JCK-3 — 11-26-14 [34]

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.

38. 11-48782-D-13 ANANT/SURAGNI MISHRA — MOTION TO MODIFY PLAN
MC-3 — 11-26-14 [56]

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.

39. 14-28682-D-13 ARMANDO/LINDA MARTINEZ — MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL, INC.
MSM-2 — 11-28-14 [30]

Final ruling:

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

40. 13-33386-D-13 WILMER/IRVINE JOHNSON — MOTION TO MODIFY PLAN
JCK-3 — 11-21-14 [55]

Final ruling:

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

41. 14-27887-D-13 KENNY JENSEN — MOTION TO CONFIRM PLAN
DSH-2 — 11-18-14 [45]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve the creditor filing Claim Nos. 9, 10, and 11 at the address on its proofs of claim, as required by Fed. R. Bankr. P. 2002(g); (2) the motion, notice of motion, and amended notice of motion all refer to a second amended plan filed November 17, 2014,

whereas, the supporting declaration indicates the debtor is seeking to confirm a third amended plan filed October 31, 2014; and (3) the proof of service does not properly evidence service as required by LBR 9014-1(e)(3). The moving party filed a single proof of service for three different motions, rather than filing separate proofs of service for each motion, and failed to include a docket control number on the proof of service, as required by the rule.

Finally, the debtor has failed to submit evidence sufficient to satisfy his burden of demonstrating that the plan has been proposed in good faith. The debtor originally (on August 1, 2014) proposed a plan to pay $917 per month for 60 months, with a 0% dividend to general unsecured creditors. The $917 figure was derived from Schedules I and J showing the debtor's gross income as $6,486 per month, his income after taxes and insurance deductions as $3,984, and his household expenses as $3,056, leaving monthly net income of $928. The trustee objected to the plan on the ground, among others, that the debtor had failed to provide the required pay advices. One month after that objection was filed, the debtor filed amended Schedules I and J on which he listed his gross income as $12,251 per month, his income after taxes and insurance deductions as $7,834, and his household expenses as $3,131, leaving monthly net income of $4,703. So far as the court can tell, the debtor has never explained why he understated his income on his original Schedule I so drastically, listing it as slightly over half the amount he was, apparently, actually making.[1]

A debtor signs his bankruptcy schedules under the penalty of perjury; further, truthful schedules are an absolute necessity if the bankruptcy system is to be fair and equitable to debtors and creditors alike. Here, it appears the debtor originally scheduled his income at an amount he believed would justify a 0% plan, and only after he was required to produce his pay stubs to the trustee, filed amended schedules showing his true income: almost double the amount he had originally disclosed. In these circumstances, and absent a reasonable explanation, the court finds that the debtor has failed to meet his burden of demonstrating that his plan, which proposes a plan payment, $2,441.51, that is just over one-half of the amount the debtor could afford to pay, $4,703 per month, has been proposed in good faith.

As a result of these service and evidentiary defects, the motion will be denied, and the court need not address the trustee's remaining objections at this time. The motion will be denied by minute order. No appearance is necessary.

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1 The trustee notes in his opposition to this motion that the debtor has failed, despite the trustee's earlier objection, to file an amended Form 22C. The debtor's original (and only) Form 22C filed in the case lists his current monthly income during the six months preceding the filing of the case at $6,486, whereas, as indicated, it appears he actually makes at least $12,251 per month.

42. 14-27887-D-13 KENNY JENSEN — MOTION TO VALUE COLLATERAL OF ALLIANCE CREDIT UNION
DSH-3 — 11-18-14 [49]

Final ruling:

This is the debtor's motion to value collateral of Alliance Credit Union. The motion will be denied because the proof of service does not properly evidence service as required by LBR 9014-1(e)(3). The moving party filed a single proof of service for three different motions, rather than filing separate proofs of service for each motion, and failed to include a docket control number on the proof of service, as required by the rule. As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

43. 14-27887-D-13 KENNY JENSEN — MOTION TO VALUE COLLATERAL OF ALLIANCE CREDIT UNION
DSH-4 — 11-18-14 [53]

Final ruling:

This is the debtor's motion to value collateral of Alliance Credit Union. The motion will be denied because the proof of service does not properly evidence service as required by LBR 9014-1(e)(3). The moving party filed a single proof of service for three different motions, rather than filing separate proofs of service for each motion, and failed to include a docket control number on the proof of service, as required by the rule. As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

44. 14-28090-D-13 JOSEPH CLARK — MOTION TO CONFIRM PLAN
PGM-2 — 11-14-14 [46]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve Pacific Bell and AT&T Mobility II, LLC, who have filed claims in this case, as required by Fed. R. Bankr. P. 2002(b); and (2) the moving party failed to serve the "nondebtor spouse" listed on his Schedule H. Minimal research into the case law concerning § 101(5) and (10) of the Code discloses an extremely broad interpretation of "creditor," certainly one including persons who are also liable on any of the debtor's debts. Thus, the debtor's non-debtor spouse should have been listed on the master address list (Fed. R. Bankr. P. 1007(a)(1)), and should have been served with this motion (Fed. R. Bankr. P. 2002(b)). The court notes that the debtor's Schedule J refers not to a spouse but to a girlfriend who is a dependent of the debtor. Thus, it may be that Schedule H incorrectly lists a non-debtor spouse; however, that is not something the court is required to speculate about in order to determine whether the debtor has complied with applicable service requirements.

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

45. 14-30191-D-13 RICHARD/JANET BOONE — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
RDG-1 — 12-5-14 [19]

46. 14-30095-D-13 SHEILA TERRY — MOTION TO CONFIRM PLAN
BAS-1 — 11-19-14 [20]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving papers refer to an amended plan and a first amended plan, but there is no such plan on file; the plan filed with the motion is entitled simply "Chapter 13 Plan"; (2) the moving party served the motion, notice of hearing, and declaration, but not the plan itself, as required by LBR 3015-1(d)(1); (3)the motion gives an incorrect hearing date, December 16, 2014; (4) the moving party failed to serve the Internal Revenue Service at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(c); and (5) the plan proposes to pay the secured claim of Check into Cash at less than the full amount of the claim, whereas the debtor has failed to obtain an order valuing the collateral securing the claim, as required by LBR 3015-1(j).

For the reasons stated, the motion will be denied, and the court need not reach the other issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

47. 10-29596-D-13 VIRGIL/RHONDA HOUSE — MOTION TO MODIFY PLAN
JCK-9 — 11-21-14 [116]

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.

48. 13-21396-D-13 RICK/MELANIE PAYNE — MOTION TO MODIFY PLAN
TBK-5 — 11-28-14 [83]

49.	14-20996-D-13 PGM-2	FRANCISCO/MARIA PADILLA	MOTION TO CONFIRM PLAN 11-13-14 [80]
50.	14-30012-D-13 RDG-1	SEN NGUYEN AND EN CU	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE RUSSELL D. GREER 11-21-14 [26]
51.	09-44815-D-13 CJY-1	ANTONIO/CHARITO BALINGIT	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 12-23-14 [78]
52.	09-41326-D-13 CJY-1	JOSE/HELENA MOLINA	MOTION TO VALUE COLLATERAL OF FIRST TENNESSEE BANK, N.A. 12-22-14 [159]

53. 14-29931-D-13 LISA ROCHA
RDG-3

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
11-24-14 [25]

54. 14-27445-D-13 PETER/LORI KOULOURIS

CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-24-14 [57]

55. 11-32973-D-13 LEONARD/ROMELIA MARQUEZ
CJY-1

MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
12-17-14 [58]

56. 14-29877-D-13 JOHN/KELLY COSTAMAGNA
CLH-2

MOTION TO SELL
12-22-14 [40]

Tentative ruling:

This is the debtors' motion to sell certain real property. The court intends to deny the motion for two reasons. First, the moving parties gave only 15 days' notice of the hearing, rather than 21 days', as required by Fed. R. Bankr. P. 2002(a)(2). Second, the moving parties served only the notice of hearing on creditors, and not the motion or supporting declaration, whereas the notice of hearing fails to set forth sufficient facts to enable parties-in-interest to determine whether to oppose the motion, as required by LBR 9014-1(d)(4). The notice of hearing gives only the address of the property to be sold, the names of the proposed buyers, and the proposed purchase price, adding only that all creditors holding liens on the property will be fully satisfied at the time of sale. The

notice does not state the amounts of those liens or the amount of the debtors' expected net proceeds from the sale. In fact, it is doubtful the motion and supporting declaration provide sufficient additional information to enable a determination as to whether to oppose the motion. Those documents add only that the debtors expect to net $700,000 from the sale, that they will not relinquish title to or possession of the property prior to full payment of the purchase price, that costs of sale will be paid from the sale proceeds, that the debtors and the buyers will split those costs equally, that the debtors are current on their plan payments, and that the sale will not affect their ability to continue their plan payments. The moving papers should disclose the identities of the lienholders and the amounts of their liens, the amounts of expected real estate commissions, and what the effect of the sale and the $700,000 in net proceeds will be on the debtors' proposed chapter 13 plan.

The court will hear the matter.

57.	14-26588-D-13 RDG-4	SCOTT/NANETTE SPEAKER	CONTINUED MOTION TO DISMISS CASE FOR UNREASONABLE DELAY THAT IS PREJUDICIAL TO CREDITORS AND/OR MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS 12-2-14 [42]