

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 21, 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. | 13-33901-D-13 RDG-1 | RUBY LIPTACK | OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 12-20-13 [15] |
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|----|-----------------------|-----------------|---|
| 2. | 13-33902-D-7 RDG-2 | LUCIA CASTANEDA | OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 12-20-13 [14] |
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Final ruling:

This case was converted to a case under Chapter 7 on January 8, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

3. 12-28604-D-13 WILLIAM/GINA CRONIN MOTION TO MODIFY PLAN
DCJ-5 12-10-13 [94]

4. 13-21405-D-13 DAVID/MICHELE SOTO MOTION TO CONFIRM PLAN
RKB-4 12-10-13 [71]

Final ruling:

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

5. 11-46712-D-13 ALBERT/LAVETTE RICHARDS MOTION TO MODIFY PLAN
HWW-4 12-17-13 [70]

Final ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The modified plan is based on a mortgage loan modification that has not been approved by the court. (See motion of Bank of New York Mellon, DC No. MBB-1, also on this calendar.) Because the loan modification that is essential to the proposed modified plan has not been approved, this motion will be denied, and the court need not reach the issue raised by the trustee at this time.

The motion will be denied by minute order. No appearance is necessary.

6. 11-46712-D-13 ALBERT/LAVETTE RICHARDS MOTION TO APPROVE LOAN
MBB-1 MODIFICATION
11-27-13 [62]

Final ruling:

This is the motion of the Bank of New York Mellon for an order approving a loan modification agreement. The motion will be denied for two reasons. First, it is not supported by evidence sufficient to demonstrate that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(6). In support of the motion, the moving party has submitted unauthenticated copies of a purported loan modification agreement, note, deed of trust, and assignment of deed of trust, together with the moving party's counsel's conclusory statement in the motion that "[a]pproval of the Loan Modification Agreement will benefit the Debtors and will not

prejudice the rights of any other party in interest." Motion, filed Nov. 27, 2013 ("Motion"), at 2:19-21. The moving party has provided no factual allegations, let alone evidence, that would support those conclusions.

Second, the moving party served only the debtors, their attorney, the chapter 13 trustee, and the United States Trustee, and failed to serve any of the other creditors in this case. The moving party's counsel makes the statement in the motion (again, conclusory and unsupported) that "[n]otice of the relief requested has been provided to interested parties." Motion, at 2:22-23. The moving party has failed to demonstrate that the other creditors in the case are not parties with an interest in the outcome of this motion, and thus, that there was no need to serve them.

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

7. 13-35712-D-13 THERESA DURHAM MOTION TO VALUE COLLATERAL OF
ALB-1 SANTANDER CONSUMER USA
12-17-13 [8]

Final ruling:

This is the debtor's motion to value collateral of Santander Consumer USA ("Santander"). The motion will be denied because the moving party failed to serve Santander to the attention of an officer, managing or general agent, or agent for service of process, as required by Fed. R. Bankr. P. 9014(b) and 7004(b)(3). As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

8. 13-35712-D-13 THERESA DURHAM MOTION TO VALUE COLLATERAL OF
ALB-2 BENEFICIAL/HFC
12-18-13 [11]

Final ruling:

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

9. 13-35513-D-13 ANDRES SANCHEZ MOTION TO VALUE COLLATERAL OF
DN-1 BANK OF AMERICA
12-24-13 [8]

Final ruling:

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

10. 13-34814-D-13 RICHARD/CHERYL VARGAS MOTION TO VALUE COLLATERAL OF
MJH-2 KEY BANK, N.A.
12-5-13 [21]

Final ruling:

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

11. 13-34116-D-13 ROBERT/TINA BREEDLOVE MOTION TO VALUE COLLATERAL OF
DN-1 OCWEN LOAN SERVICING, LLC
12-24-13 [16]

Final ruling:

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

12. 08-37623-D-13 DUSTIN/JULIE FOX MOTION TO MODIFY PLAN
CJY-1 12-12-13 [53]

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.

13. 13-31324-D-13 WILLIAM/ARMELITA BLAKE MOTION TO CONFIRM PLAN
DMR-1 12-6-13 [25]

14. 13-26925-D-13 JOSE CHAVEZ AND ESTHER MOTION TO CONFIRM PLAN
DVD-8 FRANCO DE CHAVEZ 12-3-13 [132]

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.

15. 13-31326-D-13 HENRY DIAZ MOTION TO CONFIRM PLAN
DMR-1 12-6-13 [35]

16. 13-34729-D-13 MARCO REACHI AND IRMA MOTION FOR RELIEF FROM
SW-1 SANCHEZ AUTOMATIC STAY
ALLY FINANCIAL, INC. VS. 12-19-13 [22]

Final ruling:

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

17. 13-29736-D-13 ERIN POTTER MOTION TO VALUE COLLATERAL OF
JM-2 INTERNAL REVENUE SERVICE
11-26-13 [45]

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.

Tentative ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The trustee has filed opposition, and the debtor has filed a reply. For the following reasons, the court agrees with the trustee, and the motion will be denied.

In her original plan, the debtor proposed to pay \$1,211.52 per month for 60 months, so as to pay her attorney's fees, trustee compensation, \$520 per month on her 2011 Dodge Durango, a small payment on a laptop computer, and a dividend of 54% on unsecured claims estimated at \$63,847. The trustee objected that the plan was not proposed in good faith because the debtor proposed to continue overwithholding from her paycheck at \$245 per month, paying \$642 per month for voluntary 403(b) contributions, and paying \$972 per month for her granddaughter's preschool, although her granddaughter is not a dependent of the debtor and is not part of her household. The debtor is also supporting a 56-year old friend who does not work, is not a member of the debtor's family, and makes no contribution to the household, which the trustee considers is another indication of lack of good faith. The court notes that the debtor is also supporting her 18-year old son, who also makes no contribution to the household.¹

Before the trustee's objection could be heard, the debtor filed the present motion. She testifies in support of the motion that her car has been totaled, and she will now be using her son's car; thus, she has removed the car lender's \$27,913 claim from the plan, with the result that, at virtually the same plan payment as before, she now proposes to pay 100% to her unsecured creditors. She has made no changes to her household budget; that is, she proposes to continue her retirement contributions, her payment for her granddaughter's preschool, and the overwithholding from her paycheck. Although she has not suggested her 56-year old friend is chronically ill or disabled and therefore unable to pay for his own expenses, she also proposes to continue supporting him.²

The trustee has objected to the amended plan as not proposed in good faith because the debtor continues to pay these expenditures and to support her friend entirely. The trustee notes the debtor is not required to stay in a 100% plan for liquidation purposes, and thus, the plan puts creditors at risk of a later plan modification that would lower the dividend.³ In other words, the debtor's granddaughter, her friend, and the debtor herself benefit now from her disposable income, while her creditors bear the risk of future negative developments in her financial situation - developments that may cause her to modify her plan and adjust the dividend downward or eliminate it entirely or to convert the case to chapter 7.

Citing § 1325(b)(1)(A) and (B), the debtor contends the question of disposable income simply does not come into play in any situation where a debtor proposes a 100% plan. That is, she claims, so long as she is proposing a 100% plan, what the debtor does with her disposable income during the term of the plan - whether supporting adults who are capable of supporting themselves, or paying for a non-household member's preschool expense, or contributing to retirement, or overwithholding on her taxes - is simply "not a factor." Debtor's Reply, filed Jan. 13, 2013, at 4:13. First, the debtor cites Hamilton v. Lanning, 130 S. Ct. 2464, 2469 (2010), for the obvious proposition that the subdivisions of § 1325(b)(1) are

in the disjunctive; that is, "[i]f an unsecured creditor or the bankruptcy trustee objects to confirmation, § 1325(b) (1) requires the debtor either to pay unsecured creditors in full or to pay all 'projected disposable income' to be received by the debtor over the duration of the plan." Id.

Next, the debtor claims that once one or the other of those two tests is met, the court may not consider the amount of the debtor's disposable income in determining whether the plan has been proposed in good faith, as required by § 1325(a) (3); that is, the court may not consider how much the debtor is proposing to pay into the plan versus how much she proposes to retain for herself or for friends or relatives. The debtor cites a few cases that suggest such a result (none from a court in the Ninth Circuit). Thus, "[s]ome courts hold that the 2005 additions to § 1325(b) subsume the good faith requirement in § 1325(a) (3) and if a debtor's plan complies with the technical requirements of § 1325(b), it is presumed to be filed in good faith." In re Johnson, 2011 Bankr. LEXIS 1649, *10 (Bankr. N.D. Iowa May 3, 2011). Others hold that good faith remains an additional requirement, "above and beyond the technical requirements of § 1325(b)." Id. And some take "an intermediate approach." Id. at *11, citing In re Williams, 394 B.R. 550, 572 (Bankr. D. Colo. 2008) ["the passage of BAPCPA did not wholly eliminate consideration of a debtor's ability to pay in the context of a good faith analysis under § 1325(a) (3)."].

The debtor's position - that the question of a debtor's disposable income is simply not in issue in a 100% plan - apparently has no boundaries; thus, a debtor might use a significant portion of her disposable income for gambling, for example, or expensive vacations or expensive gifts for her friends, so long as she proposes a 100% plan. This position would lead to absurd results, and because it would allow the debtor to immediately benefit herself and anyone else she chooses, while exposing her creditors to the lion's share of the risk of future negative developments in her financial situation, it would directly contravene one of the fundamental purposes of BAPCPA - "to help ensure that debtors who can pay creditors do pay them." Ransom v. FIA Card Servs., N.A., 131 S. Ct. 716, 721 (2011). Finally, in many cases, it would lead to the ironic result that debtors who are better off financially, such that they can afford to propose a 100% plan in the first place, would be free to retain all of their excess income, no matter how much greater than the required plan payments, while debtors who are less well-off, and consequently, less able to pay their creditors, are, if the trustee or an unsecured creditor objects, constrained to devote all of their excess income to the plan for its duration.

In short, the court believes that in cases where the debtor has significant disposal income that is not being paid into the plan, that circumstance may constitute bad faith, even if the debtor is proposing a 100% plan. In this case, the debtor proposes to make plan payments of \$1,178 per month while retaining disposable income totaling at least \$1,859 per month for the benefit of the debtor and her granddaughter (not including amounts she spends to support her friend and her son). The trustee takes the position that in these circumstances, the plan is not proposed in good faith, and the court agrees. The court will hear the matter.

1 The debtor's annualized current monthly income at the commencement of the case was \$129,883, almost double the median-family income, even for her household of three, which includes the two adults who are contributing nothing to their own support.

2 The debtor is also continuing to support her 18-year old son, although the court recognizes he is permitting her to use his car.

3 The debtor's response - that no debtor is "required" to stay in a chapter 13 plan - misses the point, which is simply that the debtor has virtually no non-exempt assets, and therefore, the liquidation test does not create an incentive for her to continue with a 100% plan to completion.

19. 10-25940-D-13 DANNY/KATHY ROQUE
JDP-1

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
12-10-13 [32]

Final ruling:

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

20. 11-25640-D-13 SHEILA BALLIN
CJY-1

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FRIEND YOUNGER,
PC FOR CHRISTIAN J. YOUNGER,
DEBTOR'S ATTORNEY(S), FEES:
\$2,850.00, EXPENSES: \$0.00
12-12-13 [91]

Tentative ruling:

This is the motion of the debtor's counsel in this case ("Counsel") for additional attorney's fees. Counsel requests approval of \$2,850 in addition to the \$3,500 Counsel has already received. Although no party has filed opposition, the court has an independent duty to review all requests for compensation and to determine their reasonableness pursuant to § 329 of the Bankruptcy Code.

Section 330 of the Code sets out the standards by which courts should determine the reasonableness of fees under § 329; reasonableness is determined by looking at the nature, extent, and value of the services rendered. See In re Eliapo, 298 B.R. 392, 401 (9th Cir. BAP 2003). Section 330(a)(3) of the Code states that in determining the amount of reasonable compensation, the court should consider the nature, extent, and value of the services performed, taking account of all relevant factors, including the time spent on the services, the rates charged, and the customary compensation of comparably skilled attorneys in other cases.

Reviewing fee applications on a line-by-line basis is an undesirable task. However, in cases such as this, where requested fees for a chapter 13 case exceed the "no-look" fee applicable at the time the case was filed by such a significant amount (\$6,350 versus \$3,500), the court must take a close look at the fees charged to determine their reasonableness, regardless as to how desirable the task may be.

The court finds that Counsel's hourly rate, \$250, is reasonable, and the court does not have an issue with the quality of Counsel's services. With that said, the court does have concern over whether the amount of time charged for specific tasks is reasonable. To begin with, Counsel's services have been billed in increments of quarters of an hour rather than tenths of an hour, as is customary for attorneys practicing in this court, and as was required by the court's former Guidelines for Compensation and Expense Reimbursement of Professionals. See In re Pedersen, 229 B.R. 445, 449 (Bankr. E.D. Cal. 1999). Counsel's use of the quarter-of-an-hour increment with 0.25 as the minimum makes it difficult for the court to find that all services were billed at the actual amount of time spent. It also appears that the time charged for certain services was excessive. For example, for an order confirming the debtor's plan, which was nothing more than the court's standard-form of order with the attorney's fee figures filled in, Counsel billed one-half hour of attorney time, or \$125. For a one-sentence order confirming a modified plan, Counsel billed another one-half hour, albeit of legal assistant time.¹ Counsel billed one-half hour of attorney time, or \$125, for reviewing an opposition by the trustee that simply stated that the debtor's proposal to continue paying on her student loans while paying nothing to other general unsecured creditors constituted unfair discrimination. Counsel billed one-half hour of attorney time to review a mortgage lender's objection to confirmation that stated only that the plan understated the amount of the pre-petition arrears due the lender, and that the plan was therefore not feasible.

Counsel also billed exactly one hour of attorney time for attending the meeting of creditors and for each of three court appearances (including one hour each for two motions that were heard at the same time), and exactly two hours of attorney time for preparing each of three motions to confirm or modify a plan and for this fee application. That each of these tasks took exactly the same amount of time, each in one-hour increments, appears unlikely.

The court is also concerned that Counsel has billed for legal assistants' time, at \$75 per hour, for services that appear to be secretarial in nature, which are, therefore, not compensable. See Sousa v. Miguel, 32 F.3d 1370, 1374 (9th Cir. 1994). For example, on several occasions, Counsel billed for its legal assistants' time spent filing and serving motions. In each instance, the legal assistant "lumped" the time spent on that task with time spent preparing supporting documents and meeting with the debtor; the court is unable to segregate the non-compensable time. Further, in each instance, the legal assistant did not identify what supporting documents he or she prepared, and there is no indication his or her meeting with the client was for anything more than simply obtaining the client's signature on a declaration. Finally, it appears certain tasks performed by a legal assistant at the beginning of the case were secretarial in nature. For the following, Counsel billed one hour each, at \$75 per hour: "Filed petition and prepared letters to debtor"² and "Stopped foreclosure sale on debtor's primary residence."³

For the reasons stated, the court finds that the amounts billed for the legal assistants' time for the services described above was not reasonable, and will reduce the fee request by the total billed, \$731.25.⁴ The court also finds that the time spent preparing the orders confirming the original and modified plans and reviewing simple oppositions, as described above, was excessive, and will reduce the fee request by one-half of the amounts billed for those services, \$206.25.⁵ Finally, the court will reduce the fee request by the amount billed for one of the two separate hours Counsel billed for each of the two hearings held at the same time (May 29, 2012); thus, the court will reduce the request by \$250. The court will not

reduce the request for the time billed for the four motions at exactly two hours each, although the court would caution Counsel that the lack of any variance in the billings suggests Counsel billed a fixed amount for each motion rather than keeping records of the specific amounts of time spent.

For the reasons stated, the court will reduce the fee request, \$2,850, by \$1,187.50, and will approve additional fees of \$1,662.50. The court will hear the matter.

1 The complete text of the order is: "Based upon the Motion to Modify heard by the U.S. Bankruptcy Court on July 10, 2012, it is HEREBY ORDERED that the Debtors' Chapter 13 plan is modified as proposed in the second modified Chapter 13 Plan filed June 5, 2012 with the following provisions: [none]."

2 There is no indication the letters were anything other than standard-form letters sent to all of Counsel's clients.

3 There is no indication this service consisted of anything other than faxing the filed petition to the lender.

4 This is the total amount billed for the legal assistants' services on 3/7/11 (two entries), 3/17/11, 5/12/11, 4/13/12 (two entries), 6/5/12 (two entries), and 12/6/12.

5 This equals one-half of the amounts billed for the described entries on 4/29/11, 7/12/11, 5/4/12, and 7/12/12.

21. 13-32841-D-13 CHARLES EVINS CONTINUED MOTION TO VALUE
RWF-1 COLLATERAL OF BDM MORTGAGE
SERVICES, INC.
10-29-13 [15]

Final ruling:

This case was dismissed on December 13, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

22. 13-32841-D-13 CHARLES EVINS CONTINUED MOTION TO VALUE
RWF-4 COLLATERAL OF BDM MORTGAGE
SERVICES, INC.
10-29-13 [27]

Final ruling:

This case was dismissed on December 13, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

23. 10-29942-D-13 ALAN/LADONNA TORRES MOTION TO SELL
KRW-1 12-24-13 [79]
24. 11-45142-D-13 ELIZABETH LAJOS MOTION TO MODIFY PLAN
JBR-8 12-2-13 [113]
25. 12-21542-D-13 GILBERT RODRIGUEZ AND MOTION TO MODIFY PLAN
CJY-5 STEPHANIE 12-10-13 [86]
26. 13-31842-D-13 RONALD/MARILETH JAMORABON MOTION TO CONFIRM PLAN
LTF-1 12-2-13 [32]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The court is not prepared to consider the motion at this time because the moving parties failed to serve the Franchise Tax Board (the "Board") at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b). The court will continue the hearing to March 4, 2014, at 10:00 a.m., the moving party to serve the Board at the correct address no later than January 21, 2014, and to file a proof of service no later than January 23, 2014. The hearing will be continued by minute order. No appearance is necessary on January 21, 2014.

27. 13-35043-D-13 MILLARD/DONNA HASLAM MOTION TO VALUE COLLATERAL OF
DN-1 CHASE
12-24-13 [18]

Final ruling:

The hearing on this motion is continued to March 18, 2014 at 10:00 a.m. per the parties' stipulation. No appearance is necessary.

28. 10-27851-D-13 JAMES/ELLEN MORRIS MOTION TO APPROVE LOAN
CLH-4 MODIFICATION
12-19-13 [47]

29. 11-41652-D-13 JOHN KILLIAN AND INEZ MOTION TO MODIFY PLAN
JDP-3 PERKINS-KILLIAN
12-17-13 [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.

30. 13-33252-D-13 JIMMY/MELODY MURRAY MOTION TO VALUE COLLATERAL OF
JDP-1 PREFERRED CREDIT, INC.
12-11-13 [25]

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.

31. 13-34853-D-13 JUDY FOSTER MOTION TO VALUE COLLATERAL OF
JCK-1 GMAC MORTGAGE
12-12-13 [15]

Final ruling:

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

32. 09-28554-D-13 RUDY CARRASCO AND HAPISA MOTION TO MODIFY PLAN
JCK-5 SUGHAYAR 12-12-13 [68]

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.

33. 09-28554-D-13 RUDY CARRASCO AND HAPISA MOTION TO INCUR DEBT
JCK-6 SUGHAYAR 12-13-13 [74]

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 to incur debt is supported by the record. As such the court will grant the motion to incur debt by minute order. No appearance is necessary.

34. 12-39155-D-13 THOMAS GARCIA MOTION TO MODIFY PLAN
JCK-3 12-18-13 [38]

Final ruling:

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

35. 13-20157-D-13 DAVID JACQUES AND MELONIE MOTION TO MODIFY PLAN
MJH-1 BROWN-JACQUES 12-3-13 [43]

Tentative ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The trustee has filed opposition. As discussed below, the court agrees with the trustee, and the motion will be denied.

The debtors' present confirmed plan calls for plan payments of \$1,045.54 per month for 60 months, with a dividend of 24.75% to general unsecured creditors. The proposed modified plan would lower the plan payment to \$875 per month for the remaining 49 months of the plan, and would increase the dividend to general unsecured creditors to 90%.¹ As the trustee points out, the debtors' supporting declaration states only that "[t]he current plan payment is a hardship for [them]." Decl., filed Dec. 3, 2013, at 1:25. The trustee adds that, as the debtors have incurred no plan delinquencies, there is no evidence they cannot make the current payment, and they have offered no explanation as to why the current payment is a hardship.

The court notes that the debtors are significantly above-median income, even for a family of four, which includes their two adult children, who were 22 and 24 years old when this case was filed, a year ago. Neither child contributes anything to the household expenses, yet the debtors are providing for them at the expense of their creditors, with no showing the debtors should be permitted to deduct those children's living expenses in light of § 707(b)(2)(A)(ii)(II) of the Code (incorporated into the analysis for above-median income debtors by § 1325(b)(3)).

To conclude, absent a satisfactory explanation as to why the present plan payment is a hardship for the debtors, the court is unable to conclude that the debtors have met their burden of demonstrating that the modified plan has been proposed in good faith, and the motion will be denied.

The court will hear the matter.

¹ The increase in the dividend is due entirely to the fact that filed claims came in much lower than expected (\$24,793 as opposed to \$107,494). In actuality, because of the proposed lower plan payment, the total to be paid on general unsecured claims under the modified plan would be less than the debtors had expected to pay under the confirmed plan. (That is, whereas they had expected to pay 24.75% of \$107,494, or \$26,604, under the modified plan, they would be paying 90% of \$24,793, or \$22,313.)

36. 13-30563-D-13 MARCELINO/LUZVIMINDA MOTION TO CONFIRM PLAN
JCK-3 MALVAR 12-4-13 [61]

37. 10-53064-D-13 JAIME/MAGGIE RODRIGUEZ MOTION TO VALUE COLLATERAL OF
JT-2 BANK OF AMERICA, N.A.
12-6-13 [48]

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.

38. 13-34070-D-13 HARVEY/SONYA NELSON OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
12-20-13 [15]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

39. 12-22372-D-13 SUSAN JENSON MOTION TO MODIFY PLAN
MJH-3 12-3-13 [32]

Tentative ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The trustee has filed opposition. As discussed below, the court agrees with the trustee, and the motion will be granted, but with a caveat.

The trustee's opposition pertains solely to the provision for attorney's fees in the modified plan. The plan provides: "Debtor's attorney of record was paid \$1,200.00 prior to the filing of the case. Subject to prior court approval, additional fees of \$2,800.00 shall be paid through this plan." The next sentence of the pre-printed form plan allows the debtor to check a box to indicate how his or her attorney will seek the court's approval of the fees to be paid through the plan: whether pursuant to LBR 2016-1(c) or by filing a motion under §§ 329 and 330 of the Bankruptcy Code. The debtor did not check either box.

When this case was commenced, on February 7, 2012, the debtor's attorney "opted in" to the court's guidelines; that is, he opted to be paid a flat fee for his services in the case, pursuant to the court's then Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases (since superseded by LBR 2016-1). Thus, in his Rule 2016(b) statement, filed with the petition, he certified that the compensation paid to him within the year prior to the filing, or agreed to be paid, for his services in the case was \$3,500, of which he had received \$1,200 prior to the filing, leaving a balance of \$2,300. The order confirming the debtor's plan approved attorney's fees of \$3,500, noted that \$1,200 had been paid prior to the filing, and provided that the balance, \$2,300, would be paid through the plan, provided the attorney and debtor had executed a Rights & Responsibilities. The

debtor and her attorney had signed a Rights & Responsibilities, which was filed February 7, 2012, with the debtor's petition. The Rights & Responsibilities stated, "Initial fees charged in this case are \$3,500.00, and of this amount, \$1,200.00 was paid by the debtor before the filing of the petition." It added that, "where substantial and unanticipated post-confirmation work is necessary, the attorney may request the court to approve additional fees."

The trustee objects to the present plan because it provides for additional fees - \$500 in addition to the original balance due, \$2,300 - to be paid through the plan, but does not indicate how the debtor's attorney will obtain court approval of the additional fees. In response to the trustee's objection, the debtor and her attorney have filed an amended Rights & Responsibilities, which states, "Initial fees charged in this case are \$4,000.00, and of this amount, \$1,200.00 was paid by the Debtor before the filing of the petition." The debtor's attorney filed an amended Rule 2016(b) statement, in which he certified that the compensation paid to him within the year prior to the filing, or agreed to be paid, was \$4,000, of which \$1,200 had been paid prior to the filing, leaving a balance of \$2,800.

These amended documents represent a misunderstanding of the purpose and function of the Rights & Responsibilities and the Rule 2016(b) statement. The latter is meant to document agreements made between the debtor and the attorney before the filing of the petition, concerning the attorney's compensation. Similarly, the Rights & Responsibilities is an agreement setting forth what the debtor and the attorney, respectively, agree to do before and after the case is filed, and what they agree - before the case is filed - is the fee to be paid by the debtor to the attorney. By amending these documents, what the debtor's attorney is saying is that before the filing of the case, the debtor and the attorney agreed the attorney would be paid \$4,000 for his services in the case. The court does not believe that is what happened. The court believes, as the original Rule 2016(b) statement and the original Rights & Responsibilities stated, that the debtor and the attorney agreed the fee would be \$3,500, and that it was only after the motion to modify the debtor's plan became necessary that they agreed to the additional \$500 in fees.

In short, by filing the amended Rule 2016(b) and amended Rights & Responsibilities, the debtor's attorney has misstated the agreement he and the debtor made before the filing of the case, apparently in an attempt to circumvent the explicit requirement in paragraph 4 of the Guidelines (now superseded by LBR 2016-1(c)(3)) that if the initial agreed-upon fee is not sufficient to fully and fairly compensate the attorney, the attorney may apply for additional fees. Thus, the court will not approve any additional attorney's fees to be paid through the plan, but will otherwise grant the motion and confirm the modified plan. The debtor's attorney may apply separately for approval of additional fees in the manner previously provided by the Guidelines and now provided by LBR 2016-1(c)(3). The moving party is to lodge an order confirming the modified plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03, with the provision that no additional attorney's fees will be paid without further court order. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

The court will hear the matter.

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|-----|------------------------|-----------------------|--|
| 40. | 13-31773-D-13 RDG-2 | CHRISTIAN BADER | CONTINUED MOTION TO DISMISS CASE FOR UNREASONABLE DELAY THAT IS PREJUDICIAL TO CREDITORS AND/OR MOTION TO DISMISS CASE 12-3-13 [50] |
| 41. | 13-34175-D-13 HWW-1 | ENRIQUE/ELDA GONZALEZ | MOTION TO VALUE COLLATERAL OF FINANCIAL CENTER CREDIT UNION 12-24-13 [27] |
| 42. | 13-34175-D-13 RDG-1 | ENRIQUE/ELDA GONZALEZ | OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 12-20-13 [24] |
| 43. | 13-34175-D-13 RDW-1 | ENRIQUE/ELDA GONZALEZ | OBJECTION TO CONFIRMATION OF PLAN BY FINANCIAL CENTER CREDIT UNION 12-13-13 [21] |

44. 13-35379-D-13 STEVEN/SOCORRO JOSEPH MOTION TO VALUE COLLATERAL OF
JCK-1 ONEMAIN FINANCIAL
12-12-13 [12]

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.

45. 13-32383-D-13 BILLIE SCHMIERER MOTION TO CONFIRM PLAN
MRL-1 11-14-13 [15]

46. 11-46785-D-13 DEWAYNE/MILDRED WEDDLES AMENDED MOTION TO MODIFY PLAN
JCK-6 12-18-13 [103]

Final ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The motion will be denied because the service list attached to the proof of service is from a case filed by the debtors in 2010; thus, the moving parties failed to serve several creditors at the addresses on their proofs of claim filed in this case, as required by Fed. R. Bankr. P. 2002(g) (1).

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

47. 13-32385-D-13 ERIC PENEYRA CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
11-15-13 [17]

48. 13-34186-D-13 JEREMY/KAREE HARRISON MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
FIRST INVESTORS SERVICING 12-18-13 [21]
CORP. VS.

Final ruling:

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

49. 09-35888-D-13 MARCINE REED MOTION TO MODIFY PLAN
BG-1 12-3-13 [169]

Final ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve the parties requesting special request in this case at DN's 9 and 26, as required by Fed. R. Bankr. P. 2002(g)(1); (2) the moving party failed to serve the creditor that filed Claim No. 4 at either the address on its proof of claim or the address of its transferee, as shown on the transfer of claim filed July 16, 2013, as required by the same rule; (3) the moving party failed to serve the IRS at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(c) (the moving party used the address on an outdated roster); and (4) the moving party failed to serve Emblem and the Santa Clara County Sheriff's Office, which have not filed proofs of claim, at their addresses as listed on the debtor's Schedule F, as required by Fed. R. Bankr. P. 2002(b) and (g)(2) .

As a result of these service defects, the motion will be denied, and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

50. 12-34189-D-13 SUSAN KRALJ MOTION TO MODIFY PLAN
EJS-2 12-16-13 [93]

Final ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied because the service list attached to the proof of service is from an entirely different case; thus, there is no evidence the motion was served on the creditors in this case, as required by Fed. R. Bankr. P. 2002(b) .

As a result of this service defect, the motion will be denied. For the guidance of the parties, however, the court adds the following. The trustee opposed

this motion on the ground that the plan was not proposed in good faith. The trustee noted that the debtor had deducted medical insurance expenses on her Schedule J in the amount of \$178, but her paystubs show a \$250 medical insurance deduction that comes out of her paycheck. Thus, the trustee concluded, the schedules show the debtor is paying the same expense twice. The debtor responds that the \$178 is not duplicative of the deduction from her paycheck - it is for unreimbursed insurance expenses; that is, expenses not fully covered by her flex plan at work. Although neither the debtor's original Schedule I nor her first amended Schedule J included any expense for unreimbursed insurance expenses, the court would be inclined to accept her explanation. However, the new expenses are symptomatic of the multiple changes the debtor has made to her Schedules I and J in this case.

In a tentative ruling on the debtor's motion to confirm an earlier modified plan (later incorporated into the court's final ruling), the court expressed its concern that the debtor had enjoyed an increase of \$1,253 per month in her income, of which she had offset a significant portion by increases in her expenses, with a corresponding reduction in the dividend to unsecured creditors - from 30% to 11%. For this new modified plan, the debtor has reduced some of her expenses, but also shows her income as reduced and her payroll taxes as increased. She states that her income as reported on her most recent amended Schedule I consists of her base salary of \$6,815 per month and a grant in the amount of \$1,079 per month, for a total of \$7,894, down \$108 from her income reported in August of 2013. Her motion states: "She will also receive sporadic hourly payments, which typically amount to \$80.00 - \$110.00 per month, although they are not dependable, nor are they guaranteed." Motion, filed Dec. 16, 2013, at 2:6-8. The debtor's newest amended Schedule I includes no portion of this income, although the debtor admits she typically receives \$80 to \$110 per month. Given the debtor's history of increasing expenses in this case, at the same time as her income has increased, the court questions her failure to account for this additional income in her current budget. These issues will need to be addressed in any subsequent motion.

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

51. 13-35390-D-13 PAUL/KIMBERLY CAVA
ALB-1

MOTION TO VALUE COLLATERAL OF
WELLS FARGO DEALER SERVICES
12-10-13 [11]

52. 13-35390-D-13 PAUL/KIMBERLY CAVA MOTION TO VALUE COLLATERAL OF
ALB-2 SPRINGLEAF FINANCIAL
12-14-13 [14]

Final ruling:

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

53. 13-35292-D-13 JULIO/TAMMI ADAME MOTION TO VALUE COLLATERAL OF
DN-1 THE BANK OF NEW YORK MELLON
12-24-13 [16]

Final ruling:

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

54. 13-34293-D-13 WILLIAM BUDREWICZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
12-20-13 [21]

55. 13-28494-D-13 JESSE/RODELIZA DELEON OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
12-20-13 [38]

56. 13-33597-D-13 GERARDO ZUNIGA OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
12-9-13 [24]

Final ruling:

This case was dismissed on December 18, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

57. 08-31937-D-13 DANNY/DORE PITTS MOTION TO INCUR DEBT
JCK-6 1-2-14 [108]

58. 08-34947-D-13 KURT/JEANNIE MOELLER MOTION TO VALUE COLLATERAL OF
JDP-1 SUNTRUST MORTGAGE
1-2-14 [140]

Final ruling:

This is the debtors' motion to value collateral of Suntrust Mortgage. The motion will be denied because the notice of hearing states that any party wishing to oppose the motion must serve and file written opposition at least 14 days prior to the hearing date, and that without good cause, no party will be heard if written opposition has not been timely filed, whereas the moving parties gave only 19 days' notice of the hearing, rather than 28 days', as required for notices purporting to require advance written opposition. LBR 9014-1(f)(1). As a result of the defective notice, interested parties may be discouraged from attending the hearing to oppose the motion.

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

59. 11-27253-D-13 PATRICK/LUCILIA RYNEARSON MOTION TO INCUR DEBT
CJY-3 12-31-13 [41]

60. 11-37574-D-13 SANTIAGO VALENCIA GALVEZ CONTINUED NOTICE OF DEFAULT AND
AND MARIA VALENCIA MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-6-13 [29]
61. 09-47175-D-13 REYNALDO/DENISE DELGADO MOTION TO SELL
CJY-1 12-30-13 [103]
62. 12-35682-D-13 CHARLES/TAMMY CARSTERSEN CONTINUED OBJECTION TO DEBTOR'S
RDG-2 CLAIM OF EXEMPTIONS
12-13-13 [133]

Tentative ruling:

This is the trustee's objection to the debtors' claim of exemption of the proceeds of debtor Tammy Carstensen's claims for injuries she sustained in an automobile accident on September 3, 2011. The amount of the proceeds is \$200,000 (\$129,514 net to Mrs. Carstensen), all of which is claimed as exempt under Cal. Code Civ. Proc. § 704.140. The debtors have filed a declaration of Tammy Carstensen in reply to the trustee's objection. For the following reasons, the objection will be sustained.

With exceptions not relevant here, "an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor." § 704.140. The trustee objects to the exemption on the ground that the debtors have provided no evidence the funds are reasonably necessary for their support and that of their five-year old daughter. The debtors have responded with a declaration of debtor Tammy Carstensen, who testifies about the nature of the injuries she sustained in the accident and the various treatments she has received. She states the steroid injections she has been receiving will lose their effectiveness to the point they will no longer relieve her pain. In addition, she will need surgery on her ankle, and she has been off work since September of 2013 and expects to be off work until at least April of 2014. She testifies she has incurred \$61,508 in medical bills (she has filed 145 pages of medical records, billings, and summaries of medical treatment), and has lost \$58,225 in wages as of March of 2013. She testifies she

has continued to incur medical expenses and lost wages since then, and will continue to incur both during the seven months she expects to be off work because of the surgery.

She adds that the accident claims have now been resolved - the other driver's insurance company paid the policy limit, \$100,000, and the debtors' uninsured motorist policy paid another \$100,000, again (apparently) the policy limit. Ms. Carstensen's attorney received \$33,333 from each \$100,000 payment, for a total of \$66,666; costs and medical liens totaled \$3,820. Thus, Mrs. Carstensen received proceeds totaling \$129,514. She concludes: "We are claiming the proceeds from the settlements as exempt as they will support [us?], given our expected medical costs and loss of income." T. Carstensen Decl., filed Dec. 31, 2013, at 3:10-11.

The court finds nothing here that would support a conclusion that the proceeds are reasonably necessary for the support of the debtors and their daughter. Mr. Carstensen is a network administrator for the Federal Bureau of Prisons, where he has worked for 12 years. Mrs. Carstensen is a teacher in the Manteca Unified School District, where she has been employed for 10 years. Even at the reduced income she receives since she has been off work, \$4,186 gross, \$2,019 net, and even at Mr. Carstensen's reduced income, \$6,740 gross, \$5,873 net, the debtors have combined income of \$7,892 after employment deductions and expenses of \$6,706, leaving monthly net income of \$1,186.¹ There is no indication the debtors themselves have had to bear the burden of the medical expenses, except to the limited extent of deductibles and co-pays, for which their Schedule J budgets \$400 per month.

Even if Mrs. Carstensen were forced to retire, which she does not suggest, presumably, she would have a government pension (as will Mr. Carstensen when he retires); in addition, Mr. Carstensen receives \$1,503 per month in veteran's disability income. When the case was filed, the debtors' annualized current monthly income was \$171,516, two and one-half times the median-family income for a family of three. Although their income is now less, by their own projections, it still exceeds their expenses by \$1,186 per month. In short, the court has no basis on which to conclude that the proceeds of the accident claims are necessary for the debtors' support or that of their daughter.

The court will hear the matter.

¹ The debtors have filed three sets of Schedules I and J in the 16 months this case has been pending. When they commenced the case under chapter 7, in August of 2012, they reported income of \$7,402 after employment deductions. Their Schedule J at that time showed expenses totaling \$7,384, leaving monthly net income of only \$18. (At that time, they also valued the auto accident claims at only \$14,364, a figure that appears to have been based solely on the amount remaining in their wild-card exemption after claiming other assets. It was not until six months into the case, after the chapter 7 trustee sought to employ special counsel to pursue the claims that the debtors amended their schedules to list the value of the claims as \$250,000.)

After the trustee's motion to employ special counsel was granted, the debtors filed an application to convert the case to chapter 13, which was granted. The debtors then filed amended Schedules I and J - on the amended Schedule I, although their gross income had not changed, they changed their employment deductions significantly, with the result that their combined income after deductions increased

to \$9,229. Although they made dramatic changes to several of their expenses, overall, they reduced their expenses to \$7,114, such that their monthly net income was \$2,115. Four months later, they filed further amended schedules, showing combined income of \$7,892 after employment deductions (reflecting their reduced income) and expenses of \$6,706, leaving monthly net income of \$1,186.

63. 13-35390-D-13 PAUL/KIMBERLY CAVA
SW-1

MOTION TO RESTRICT PUBLIC
ACCESS TO CLAIM #2
1-2-14 [30]

64. 13-35892-D-13 LATANYA CAIN
MWM-1
EDEN HOUSING MANAGEMENT,
INC. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-6-14 [13]