

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

March 4, 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.

1.	13-35712-D-13	THERESA DURHAM	MOTION TO VALUE COLLATERAL OF
	ALB-3		SANTANDER CONSUMER USA
			1-30-14 [33]

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.

2. 13-28721-D-13 VICKIE MURPHY MOTION TO MODIFY PLAN
JCK-1 1-28-14 [18]

Final ruling:

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

3. 13-31224-D-13 ALVARO MONCADA AND CARMEN CONTINUED OBJECTION TO CLAIM OF
JDP-4 MORAGA JP MORGAN CHASE BANK N.A.,
CLAIM NUMBER 2
1-9-14 [57]

Final ruling:

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

4. 10-25027-D-13 PETER/AUGUSTINE MONDOT MOTION FOR CONSENT TO ENTER
RAC-10 INTO LOAN MODIFICATION
AGREEMENT
1-27-14 [152]

5. 10-25027-D-13 PETER/AUGUSTINE MONDOT MOTION TO MODIFY PLAN
RAC-11 1-27-14 [160]

Tentative ruling:

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

The debtors have filed a motion to approve a mortgage loan modification, which is also on this calendar. The loan modification would save the debtors \$548 per month on their mortgage payment plus \$75 per month in homeowner's insurance premiums, which will now be included in their mortgage payment, for a total savings of \$623. In addition, debtor Peter Mondot has obtained new employment, and his

gross income has increased by \$2,387 per month. (The joint debtor's income has remained the same.) Thus, the debtors have enjoyed a \$3,010 upside in the income and mortgage portions of their financial situation. Despite these favorable changes, under the debtors' proposed modified plan, the dividend to general unsecured creditors would remain at 0%.

The trustee opposes the motion on the ground that, for two reasons, the plan is not proposed in good faith. The trustee's first objection is that debtor Peter Mondot's tax withholdings have increased from \$520 to \$1,826 per month, an increase of \$1,306 per month, and he has added a wage deduction of \$709 per month for a "vacation deduction." Together, the increase and deduction offset \$2,015 of the debtors' upside changes. Although tax withholdings may be expected to increase somewhat with an increase in gross wages, as the trustee points out, the debtors have failed to explain why the debtor's increase is so significant - more than half the total increase in wages, and have failed to provide documentation supporting the vacation deduction.

The trustee's second objection is that the debtors have, without explanation, increased their non-mortgage expenses, including home maintenance, food, clothing, medical and dental, transportation, recreation, and personal care, by a total of \$1,105 per month, thereby offsetting the rest of their "upside." As the trustee points out, these increased expenses come just nine months after the debtors' next most recent amended Schedule J was filed. The court notes also that the debtors have filed six different Schedules J in the almost four years this case has been pending, and until this newest version, they found no need to increase any of their expenses.

When debtors encounter changes in their financial affairs that would tend to result in additional funds being available for creditors, and then make wholesale changes to their projected income and expenses so as to retain virtually all the additional funds for themselves, especially in situations such as this one where the change in circumstances is so substantial - a increase in gross income of \$2,387 per month and mortgage savings of \$623 per month, and where the offsetting changes - a total of \$3,120 - are so significant, they call into question whether they have proposed their modified plan in good faith or whether they have simply manipulated their income and expenses so as to retain for themselves every penny of the newly-available income that would otherwise have gone to their creditors.

The debtors have filed a response to the trustee's opposition, along with yet another set of amended Schedules I and J. In the response, they address the trustee's concern about Mr. Mondot's tax withholdings only by saying they have provided the trustee with proof of his changed income. The court will hear from the trustee as to whether the withholdings are reasonable. The debtors have also, however, acknowledged that of the \$709 "vacation deduction," Mr. Mondot receives back approximately \$472 per month in vacation pay. (The rest, they state, goes to union-sponsored health and welfare benefits and union dues.) Thus, the debtors have added \$472 to their Schedule I, and they propose to pay an additional \$472 into the plan, asking that this change be incorporated in the order confirming the plan.

Second, they now purport to explain their increased expenses, increases totaling, as indicated above, \$1,105 per month since April of 2013. The response explains the increases for each category (except the one for medical and dental expenses); however, for all the categories except one (home maintenance), the explanations are nothing more than a generic "the cost of food/gas/personal care has increased." The explanation is not sufficient for several reasons. First, there is

no evidence the cost of living has increased by 29% since April of 2013, and it has not. Second, these explanations come only after the trustee objected to the debtors' failure to provide explanations. Third, the explanations are provided only by the debtors' attorney and are unsupported by a declaration of the debtors. Fourth, the increases have been made only since the debtors have enjoyed a very sizeable increase in Mr. Mondot's gross income and a substantial reduction in their mortgage payment. Finally, the debtors' failure to report and factor in Mr. Mondot's vacation pay of \$472 until after the trustee raised doubts about the new \$709 deduction does not reflect favorably on the debtors' credibility.

The court recognizes, as the debtors point out, that they have defaulted three times on their plan payments. This does not necessarily mean, however, that their budgeted expenses as of April 2013 were unreasonably low or that the increases they now propose are reasonable. It may be that some increases are reasonable, but the extent of the debtors' increases and the fact that they operate to completely offset any benefit creditors might otherwise see from the substantial favorable changes in the debtors' financial circumstances, thus keeping the dividend at 0%, does not support a conclusion that this plan has been proposed in good faith.

For the reasons stated, the court concludes that the debtors have failed to meet their burden of demonstrating that the plan has been proposed in good faith, and the motion will be denied. The court will hear the matter.

6. 13-21731-D-13 LUIS/THELMA MUNOZ MOTION TO MODIFY PLAN
CJY-1 1-28-14 [22]

7. 11-29533-D-13 GUILLERMO SOTO MOTION TO VALUE COLLATERAL OF
JDP-1 JP MORGAN CHASE BANK, N.A.
2-6-14 [50]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of JP Morgan Chase Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the 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 JP Morgan Chase Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

8. 13-35436-D-13 CHARLES/LARA GLIEBE MOTION TO CONFIRM PLAN
LRR-1 1-7-14 [15]

9. 13-31842-D-13 RONALD/MARILETH JAMORABON CONTINUED MOTION TO CONFIRM
LTF-1 PLAN
12-2-13 [32]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The hearing was continued to this date because the moving parties had 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). In response to the court's ruling for the original hearing (see civil minutes for January 21, 2014, DN 46), the moving parties served the Board at the correct address, and filed a proof of service indicating they had done so. However, this was not sufficient to give appropriate notice to the Board. The court's ruling did not specifically require the moving parties to file and serve a notice of continued hearing; thus, they did not do so. In fact, they served the Board with the proposed plan, the motion, and the supporting declaration, and served no notice of hearing at all. (Further, the motion and supporting declaration served on the Board contained the original hearing date, January 21, 2014.)

The court will continue the hearing once again, to April 15, 2014, at 10:00 a.m. The moving parties shall file and serve a notice of continued hearing no later than March 4, 2014, and shall serve it on all creditors, including the Board at its correct address, and the trustee and United States Trustee no later than March 4, 2014. The notice of continued hearing shall be a notice pursuant to LBR 9014-1(f)(1). The moving parties shall file a proof of service no later than March 6, 2014.

The hearing will be continued by minute order. No appearance is necessary on March 4, 2014.

10. 11-25444-D-13 JOSE/TAMMY MAGALLANES CONTINUED MOTION TO MODIFY PLAN
HWW-3 9-24-13 [60]

11. 11-25444-D-13 JOSE/TAMMY MAGALLANES CONTINUED OBJECTION TO CLAIM OF
HWW-4 REAL TIME RESOLUTIONS, INC.,
CLAIM NUMBER 3
11-23-13 [70]

12. 12-36847-D-13 CORDELL PENNIX AND MOTION TO MODIFY PLAN
TBK-6 HORTENSIA WATTS-PENNIX 1-20-14 [65]

Final ruling:

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

13. 11-20148-D-13 DEBRA LONDON MOTION TO MODIFY PLAN
KY-1 1-22-14 [67]

14. 11-47951-D-13 CLARENCE LAWSON MOTION TO MODIFY PLAN
JCK-2 1-20-14 [31]

Final ruling:

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

15. 11-25352-D-13 ROBERT/JENNIFER WEST MOTION TO VALUE COLLATERAL OF
JDP-1 RBS CITIZENS, N.A.
2-6-14 [50]

Final ruling:

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

16. 08-37953-D-13 STACIE ALLEN MOTION TO VALUE COLLATERAL OF
JDP-1 JP MORGAN CHASE BANK
1-23-14 [94]

Final ruling:

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

17. 13-31953-D-13 ALBERTO CHAN MOTION TO CONFIRM PLAN
SJS-2 1-16-14 [40]

18. 13-30960-D-13 MANUEL/LILIA ANDRADE MOTION TO CONFIRM PLAN
DN-4 1-14-14 [65]

Tentative ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The trustee has filed opposition, and the debtors have filed a reply. The trustee objects to the plan on the basis that, according to their Schedules I and J, the debtors have significant disposable income - \$1,017 per month, all of which they will devote to their plan payments for the first 38 months of the plan, so as to pay off two vehicle loans, whereas for the last 22 months of the plan, they will reduce their

plan payment to only \$100 per month, which will result in an 0.5% dividend to their unsecured creditors, while the debtors retain the excess \$917 per month for themselves. The trustee contends this proposal is not made in good faith and does not satisfy the disposable income test of 11 U.S.C. § 1325(b).

The debtors reply that this proposal is all they are required to do, because they are above-median income debtors, and their monthly disposable income as shown on their amended Form 22C ("MDI") is a negative number. They rely on Hamilton v. Lanning, 560 U.S. 505 (2010), and Danielson v. Flores (In re Flores), 735 F.3d 855 (9th Cir. 2013) (pincites not provided by the debtors), for the proposition that because their MDI is less than \$0, any plan payment above \$0 suffices absent a showing that their income is likely to change during the plan. Because the trustee has not made such a showing, the debtors contend, they are paying under the plan all of their projected disposable income, and the plan is proposed in good faith.

The court will use this hearing as a status conference and will continue the hearing to a mutually-agreeable date to give the trustee an opportunity to address the issues raised by the debtors' citations to Lanning and Flores. The court will hear the matter.

19. 08-29564-D-13 LIONEL/MARIA MURILLO MOTION TO VALUE COLLATERAL OF
JDP-1 WELLS FARGO BANK, N.A.
1-27-14 [112]

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. 13-34572-D-13 JOHN/KARRIE HEILBRUN MOTION TO VALUE COLLATERAL OF
LRR-2 KEYBANK
1-8-14 [18]

Final ruling:

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

21. 08-27974-D-13 DAVID/ANN CONSTANCE MOTION TO VALUE COLLATERAL OF
JDP-1 WELLS FARGO BANK, N.A.
1-27-14 [86]

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.

22. 13-32076-D-13 DAVID RODRIGUEZ MOTION TO CONFIRM PLAN
PGM-1 1-21-14 [39]

23. 09-32081-D-13 KIMBALL/DANIELLE WADE MOTION TO MODIFY PLAN
CFH-4 1-14-14 [69]

24. 13-27384-D-13 JOSEPHINE ARENAS-FIERRO MOTION TO CONFIRM PLAN
RCP-5 1-16-14 [68]

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 several creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); and (2) the moving party failed to serve Crest Financial, listed on her Schedule D, at all, as required by the same rule. 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.

25. 11-46785-D-13 DEWAYNE/MILDRED WEDDLES MOTION TO MODIFY PLAN
JCK-7 1-21-14 [109]

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.

26. 12-21886-D-13 VINCENT/ANITA VILLALPANDO MOTION TO MODIFY PLAN
JCK-5 1-20-14 [51]

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.

27. 09-35888-D-13 MARCINE REED MOTION TO MODIFY PLAN
BG-2 1-17-14 [191]

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.

28. 10-31299-D-13 GLENN/RORIVIC CRAWFORD MOTION TO FILE CLAIM AFTER
EMN-7 CLAIMS BAR DATE AND/OR MOTION
TO FILE AMENDED PROOF OF CLAIM
1-15-14 [119]

Tentative ruling:

This is the debtors' motion to allow a late claim. The trustee has filed opposition, and the debtors have filed a reply. For the following reasons, the motion will be denied.

The claims bar date in this case was September 14, 2010. The debtors had listed 1st United Services Credit Union (the "Claimant") on their master address list at its correct address; thus, on May 23, 2010, the Claimant had been served with a copy of the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, &

Deadlines, along with a blank proof of claim form. The notice informed creditors that the claims bar date in the case was September 14, 2010, and also stated: "A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the 'Deadline to File a Proof of Claim' listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor."¹ Despite this notice, the Claimant did not file a proof of claim.

On May 24, 2011, the trustee filed a Notice of Filed Claims, and served it on the debtors and their counsel, thereby informing them that (1) the Claimant had not filed a proof of claim, and (2) the deadline for the debtors to file claims, pursuant to GO.05-03, was July 25, 2011.² The Notice of Filed Claims expressly referred to GO.05-03, and advised the debtors and counsel that the notice was being served so they could determine whether to object to a claim, whether to file a claim for any creditor that had failed to file a claim, and whether the plan should be modified due to filed claims. The debtors' counsel admits he received the Notice of Filed Claims.

The debtors' counsel did not ignore that notice, but as the trustee notes, he did not follow the proper procedure in that he did not file or cause the debtors to file a proof of claim on behalf of the Claimant. Instead, he "contacted an employee [of the Claimant] and requested that she file a proof of claim for the secured claim on behalf of the Debtor within the 60 day period allowed under the local rules." Declaration of Eric M. Nixdorf, filed Jan. 15, 2014 ("Decl."), at 1:23-25.³ The debtors' counsel explains: "I believed at the time that it would be more prudent to have her [the Claimant's employee] file the claim on behalf of the Debtors given that [the Claimant] was the Debtors' employer, had possession of the loan documents and most recent accounting, and pursuant to the security instrument, appeared to have power of attorney to act on behalf of the Debtors in such a capacity." *Id.* at 1:26-2:1.⁴ The Claimant filed a proof of claim - not indicating in any way that it was doing so "on behalf of the debtors" - on June 3, 2011, over eight months after the creditors' claims bar date. The debtors and their attorney allowed their 60-day bar date to expire without filing a claim on behalf of the Claimant. They now request that the Claimant's proof of claim filed June 3, 2011 be treated as timely because it was filed before the expiration of the debtors' bar date to file claims on behalf of creditors, and in the debtors' view, it was filed by the Claimant on behalf of the debtors.

In other words, the debtors' attorney does not dispute that he was aware of the 60-day bar date for the debtors to file a proof of claim on behalf of a creditor who had not filed its own proof of claim. However, instead of filing such a proof of claim on behalf of the Claimant, who he knew had not filed its own proof of claim, he asked the Claimant to file a proof of claim on behalf of the debtors, apparently, in turn, on behalf of the Claimant. This procedure contravened the unambiguous language of the applicable bankruptcy rule and the court's general order. The rule states that "[i]f a creditor does not timely file a proof of claim . . . , the debtor or trustee may file a proof of the claim within 30 days after expiration of the time for filing claims" Rule 3004 (emphasis added). The general order provided that "[i]f a creditor fails to file a proof of claim within the time required . . . , the debtor or the Trustee may file a proof of claim on behalf of the creditor pursuant to FRBP 3004." GO.05-03, para. 6(e) (emphasis added). Neither the rule nor the general order provides that if a creditor does not file a timely proof of claim, the creditor may file a late claim that will be treated as timely, simply by purporting to file the claim on behalf of the debtor, in turn, on behalf of the

creditor (although here, the Claimant did not even purport to do that).

The debtors rely on the following language in their pre-petition security agreement with the Claimant:

In the event of my default I agree to deliver the security to you at your request. If I fail to deliver it to the credit union, you or your agent are authorized to enter the place where the property is kept and take possession of the property without notice to me and without obtaining a court order to do so. I waive any right to claim that in taking the property you interfered with any of my legal rights to any extent. The credit union is appointed my attorney in fact to do anything which you decide is necessary to protect the security or to assert your rights under this agreement.

Security Agreement, Ex. A to Decl. The debtors claim this language authorized the Claimant to file the proof of claim on behalf of the debtors; thus, in their view, when the Claimant filed the proof of claim on June 3, 2011 (eight months after the creditors' claims bar date), it was doing so on behalf of the debtors, and before the expiration of the bar date for the debtors to file claims on behalf of creditors.

The court agrees with the trustee regarding this language. First, the filing of a proof of claim was not necessary to protect the Claimant's security; namely, the funds in the debtors' share account. Second, the language does not authorize the Claimant to file a proof of claim in a bankruptcy case on behalf of the debtors. Nor would such an authorization make sense - when a creditor files a proof of claim in a bankruptcy case, it does so on its own behalf; that is, in the pursuit of its own interests, not the debtor's interests. There was nothing in the Claimant's proof of claim to indicate the Claimant was filing the claim on behalf of the debtors. Third, the debtors have and had an attorney representing them in this case, who could readily and easily have filed a proof of claim for the debtors on behalf of the Claimant, as provided by Rule 3004.

As the trustee points out, the trustee should not "be required to review every provision of [the security] agreement and interpret the same to determine whether or not a late claim may be filed by a secured creditor on behalf of a debtor, particularly when there is a published and noticed procedure in place for the debtors to cure a deficiency in the filing of a claim." Trustee's Opposition, filed Jan. 15, 2014, at 2:13-16. The court agrees. Permitting the procedure utilized by the debtors in this case - requesting that the creditor file a proof of claim on the debtors' behalf instead of filing a proof of claim themselves on behalf of the creditor - would make the claims administration process unwieldy. It would require the trustee to examine every late claim filed by a creditor to determine whether the creditor filed the claim on behalf of the debtor, and if so, to determine whether the creditor had authority to file the claim on behalf of the debtor (in turn, on behalf of the creditor). In fact, because documentation is not a necessary component of an allowable claim,⁵ the creditor's proof of claim might not reveal whether the creditor had such authority, and even if the claim included the relevant documents, the question of authority might well involve complicated factual and legal issues. As indicated above, the court does not believe the security agreement gave the Claimant such authority here.

Next, the debtors make much of the fact that they are both employed by the Claimant. Thus, they "request that the Court treat the claim filed by their co-

worker Ana Stringer, as a timely filed claim on their behalf." Debtors' Motion, filed Jan. 15, 2014 ("Mot."), at 2:18-19 (emphasis added). The problem with this theory is straightforward. There is no evidence Ms. Stringer intended to file the proof of claim as the debtors' co-worker or otherwise on behalf of the debtors; instead, it is clear she filed it on behalf of the Claimant. (She signed the proof of claim as "Technical Specialist," presumably of the Claimant. Nowhere did she indicate she was signing or filing the proof of claim on behalf of the debtors.) In short, the debtors' status as employees of the Claimant has no bearing on the issue.

For the reasons stated, the court rejects the debtors' conclusion that "[t]he situation was unique in that the [Claimant] had superior facts relating to the amount of [the] claim, appeared to have authority to act on behalf of the Debtors in this capacity and was also the employer of the Debtors." Debtors' Reply, filed Feb. 18, 2014 ("Reply"), at 2:23-25. Accordingly, the debtors' request that the Claimant's proof of claim be treated as having been filed on behalf of the debtors, and thus, as having been timely filed will be denied.

The debtors request in the alternative that the amended proof of claim the debtors' attorney finally filed on behalf of the Claimant, on December 5, 2013, over 16 months after the bar date for the debtors to file claims on behalf of creditors, "be dated back to the date of the original claim and therefore treated as a timely filed claim." Mot. at 2:23-24. The debtors cite In re International Horizons, Inc., 751 F.2d 1213 (11th Cir. 1985), for the unremarkable proposition that "amendment to a claim is freely allowed where the purpose is to cure a defect in the claim as originally filed, to describe the claim with greater particularity or to plead a new theory of recovery on the facts set forth in the original claim." 751 F.2d at 1216. The debtors add that in such a case, "the amended claim should date back to the original claim filed." Reply at 2:5-6.

The problem with this theory is that there must have been a timely-filed original claim to which the purported amended claim can be said to "relate back" (International Horizons, 751 F.2d at 1217), whereas here, there was no timely proof of claim filed. Instead, here, the Claimant filed a late claim, which the debtors, much later still, purported to "amend," calling the original late claim timely as having been filed on behalf of the debtors. As discussed above, the original claim was filed by the Claimant on behalf of the Claimant, not on behalf of the debtors, and it was filed late. To permit the debtors' purported "amended" claim to relate back to the Claimant's claim, on the basis that the Claimant's claim was filed on behalf of the debtors, would simply be an end run around Rule 3004 and the court's general order. The debtors had the opportunity to file a claim on behalf of the Claimant within the extended 60-day time period; they chose not to.

Finally, the debtors request in the alternative that their "amended" claim filed December 5, 2013 on behalf of the Claimant be allowed as a late-filed claim based on excusable neglect. If the Claimant had sought allowance of its late-filed claim based on excusable neglect, the court would have no discretion to grant the motion. Pursuant to Rule 9006(b)(3), the court may enlarge the time for taking action under Rule 3002(c) (time for filing proofs of claim) only to the extent and under the conditions stated in that rule. Rule 3002(c), in turn, provides for the allowance of late-filed claims in a variety of circumstances, none of which is present here. Where none of those circumstances is present, the court lacks discretion to enlarge the time for filing claims. Gardenhire v. United States Internal Revenue Service (In re Gardenhire), 209 F.3d 1145, 1148 (9th Cir. 2000) ("a bankruptcy court lacks equitable discretion to enlarge the time to file proofs of claim; rather, it may only enlarge the filing time pursuant to the exceptions set

forth in the Bankruptcy Code and Rules"). Even where excusable neglect is shown, the court lacks discretion to allow a late claim, because excusable neglect is not a basis for allowing a late-filed claim. Dicker v. Dye (In re Edelman), 237 B.R. 146, 153 (9th Cir. BAP 1999) ["excusable neglect . . . does not apply to Rule 3002(c)."]

The debtors, however, cite In re Duarte, 146 B.R. 958 (Bankr. W.D. Tex. 1992), in which the court noted that Rule 3004 (debtor's time for filing proof of claim on behalf of creditor) "is not one of the rules listed under the 'enlargement not permitted' or 'enlargement limited' exceptions to Rule 9006(b). See Rule 9006(b) (2), (3)." 146 B.R. at 960. Thus, the court stated that "if a debtor fails to file a claim for a creditor within the time provided by Rule 3004, the debtor may request an extension after the fact, if the debtor can establish cause and demonstrate excusable neglect." Id. For this latter proposition, the court cited Rule 9006(b) (1) which, however, does not expressly provide for the enlargement of the debtor's time to file a proof of claim for a creditor. Instead, the rule provides that except as provided in subdivisions (b) (2) and (b) (3), time may be enlarged. The Duarte court's theory (which was dictum, not its holding) was that because Rule 3004 is not mentioned in Rule 9006(b) (2) or (b) (3), enlargement is permitted. The debtors have cited no authority from a court within the Ninth Circuit for this proposition, and the court is aware of none. The court is also not convinced by the Duarte court's policy analysis that its conclusion was the correct one.

However, in any event, the court need not reach the question whether, upon a showing of excusable neglect, a debtor may obtain an extension of his or her time to file a proof of claim on behalf of a creditor who has not done so, because in this case, the debtors have failed to make a showing of excusable neglect. In this case, the debtors and their attorney were made aware of their deadline for filing proofs of claim on behalf of creditors who had not done so, and also of the fact that the Claimant had not filed a proof of claim. This court, by way of its GO.05-03, and now, by LBR 3004-1, has already extended a debtor's time for filing claims for creditors who have not done so by several months longer than the deadline provided by Rule 3004 - 30 days after the creditors' claims bar date. Despite this extension provided for all chapter 13 debtors in this district, and despite their knowledge of their own deadline and their knowledge that the Claimant had not filed a proof of claim, the debtors and their attorney did not follow the simple expedient of filing a proof of claim for the Claimant. Instead, the debtors' attorney substituted his own judgment for the unambiguous language of the rule and the general order when he asked the Claimant to file a proof of claim on the debtors' behalf, knowing as he must have that if the proof of claim were viewed as having been filed by the Claimant on its own behalf, it would be disallowed as a late claim. This was not a procedure permitted by Rule 3004 or the court's general order. Further, the Claimant did not even purport to file its proof of claim "on behalf of the debtors." And the debtors and their attorney did not then, in the remaining seven weeks before their bar date ran, file a proof of claim on behalf of the Claimant. Instead, they waited another 18 months before filing their "amended" proof of claim on behalf of the Claimant. These choices do not constitute excusable neglect.

For the reasons stated, the motion will be denied. The court will hear the matter.

1 The debtors scheduled the Claimant on their Schedule D as holding a claim secured by funds of the debtors in an account at the credit union.

2 The court's general order, GO.05-03, extended the time for a debtor to file a proof of claim on behalf of a creditor who had not filed its own claim to the date 60 days after service of the Notice of Filed Claims, which in this case, was roughly nine months longer than the debtors would have had under Fed. R. Bankr. P. 3004 - the date 30 days after the creditors' claims bar date, or October 14, 2010. Effective May 1, 2012, this generous extension is now afforded to debtors by LBR 3004-1. (All subsequent rules citations are to the Federal Rules of Bankruptcy Procedure.)

3 Counsel's reference to the "local rules" is presumably a reference to GO.05-03. At the time, it was not the court's local rules that provided the additional 60-day period for debtors to file claims on behalf of creditors, it was the general order.

4 The debtors' counsel does not indicate why the fact that the Claimant was the debtors' employer made it more prudent for the Claimant to file the proof of claim than for the debtors' counsel to do so. As far as the most recent accounting is concerned, the creditor has the better records probably more often than not, yet the rule does not provide for a creditor to file a proof of claim on behalf of the debtor - it provides for the debtor to file a proof of claim on behalf of the creditor. As far as the loan documents are concerned, the debtors' counsel apparently had copies at the time, as he claims to have relied on the security agreement as authorizing the Claimant to file a proof of claim on behalf of the debtors. See discussion below.

5 See Heath v. Am. Express Travel Related Servs. Co. (In re Heath), 331 B.R. 424, 426 (9th Cir. BAP 2005).

29. 13-35401-D-13 YVONNE BANKS
DN-1

CONTINUED MOTION TO VALUE
COLLATERAL OF OCWEN LOAN
SERVICING
1-7-14 [16]

30. 10-50108-D-13 ERNEST/PATSY GARZA
JDP-1

MOTION TO VALUE COLLATERAL OF
GREENTREE, LLC
2-17-14 [32]

Final ruling:

This is the debtors' motion to value collateral of Greentree, LLC. The motion will be denied because the moving parties gave only 15 days' notice of the hearing, whereas the notice of hearing states that any creditor wishing to oppose the motion must file and serve written opposition at least 14 days before the hearing date, and adds that without good cause, no party shall be heard in opposition to the motion if written opposition has not been timely filed. Thus, the notice of hearing does not comply with LBR 9014-1(f)(2). As a result of this notice defect, the motion will be denied by minute order. No appearance is necessary.

31. 13-35712-D-13 THERESA DURHAM OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
2-10-14 [37]
32. 13-28318-D-13 WILLIS/VICKIE MARZOLF OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY TRUSTEE, RUSSELL D.
GREER
2-10-14 [171]
33. 13-28318-D-13 WILLIS/VICKIE MARZOLF OBJECTION TO CONFIRMATION OF
BER-1 PLAN BY FINANCIAL CENTER CREDIT
UNION
2-10-14 [168]
34. 14-21057-D-13 LINA QUILAQUIL MOTION TO IMPOSE AUTOMATIC STAY
RIN-1 2-10-14 [8]

35. 12-31560-D-13 ARMANDO/LINDA MARTINEZ CONTINUED MOTION TO MODIFY PLAN
DMR-1 1-2-14 [29]

36. 09-29867-D-13 GLENN/EDELWINA COLETO MOTION TO VALUE COLLATERAL OF
JDP-1 JP MORGAN CHASE BANK, N.A.
2-12-14 [48]

Final ruling:

This is the debtors' motion to value collateral of JPMorgan Chase Bank, N.A. (the "Bank"). The motion will be denied for the following reasons. First, the moving parties gave only 20 days' notice of the hearing, whereas the notice of hearing states that any creditor wishing to oppose the motion must file and serve written opposition at least 14 days before the hearing date, and adds that without good cause, no party shall be heard in opposition to the motion if written opposition has not been timely filed. Thus, the notice of hearing does not comply with LBR 9014-1(f)(2).

Second, the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank by certified mail to the attention of an officer, which is generally sufficient under Rule 7004(h). However, in this case, a law firm filed a request for special notice on behalf of the Bank, thus bringing into play subdivision (1) of Rule 7004(h), which requires that, where an FDIC-insured institution has appeared in an action by an attorney, service must be on the attorney by first-class mail. Subdivision (1) supersedes the main rule; that is, service must be made by certified mail to the attention of an officer unless the institution has appeared by an attorney, in which case service must be made pursuant to subdivision (1). In this case, the moving parties failed to serve the Bank through the attorneys who filed the request for special notice.

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

37. 13-23688-D-13 STEVEN/ERIN SANSONI MOTION TO VALUE COLLATERAL OF
TBK-4 E*TRADE BANK
2-17-14 [62]

38. 13-32499-D-13 TERRI WRIGHT-MCDANIEL
SJS-1

CONTINUED MOTION TO CONFIRM
PLAN
12-16-13 [26]