

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

March 18, 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. [13-29403](#)-D-13 SILHADI ALAMI MOTION TO MODIFY PLAN
TBK-2 1-29-14 [[43](#)]

Final ruling:

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

2. [13-35204](#)-D-13 THANH/TAMI NGUYEN OBJECTION TO DEBTORS' CLAIM OF
RDG-1 EXEMPTIONS
2-3-14 [[26](#)]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. On February 4, 2014, the debtors filed an amended Schedule C. As a result of the filing of the amended Schedule C, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

3. [14-20409](#)-D-13 MICHAEL NGUYEN AND LISA MOTION TO VALUE COLLATERAL OF
JCK-1 LIEN BANK OF AMERICA
2-4-14 [[12](#)]

Final ruling:

This is the debtors' motion to value collateral of Bank of America (the "Bank"). The motion will be denied because, although service was made to the attention of an officer, service was not made by certified mail, as required by Fed. R. Bankr. P. 7004(h). (Counsel should note for purposes of any future motion that, since the filing of this motion, the Bank has filed a request for special notice in this case.)

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

4. [14-20409](#)-D-13 MICHAEL NGUYEN AND LISA MOTION TO VALUE COLLATERAL OF
JCK-2 LIEN GREEN TREE SERVICING
2-4-14 [[17](#)]

Final ruling:

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

5. [14-21112](#)-D-13 SALVADOR ROJAS MOTION TO VALUE COLLATERAL OF
SAC-1 ALLY AUTO FINANCING
2-6-14 [[10](#)]

Tentative ruling:

This is the debtor's motion to value a 2007 Chevrolet Tahoe (the "vehicle") pursuant to § 506(a) of the Bankruptcy Code. The vehicle is collateral for a loan owed by the debtor to Ally Financial Inc. ("Ally"), which opposes the motion. The debtor has filed a reply. For the reasons stated below, the court will deny the motion.

In support of the motion, the debtor submitted his own declaration, in which he states: "According to Kelley Blue Book (hereinafter 'KBB'), which is widely considered the Bible of motor vehicle valuation, the Tahoe's fair market value (hereinafter 'FMV') as of today's date (February 6, 2014) is \$13,224." S. Rojas Decl., filed Feb. 6, 2014, ¶ 6. Attached to the declaration as an exhibit is a KBB pricing report showing a private party value of \$13,224 for a 2007 Chevrolet Tahoe in good condition. Ally has submitted a printout of a value report from NADA Online which, like the Kelley Blue Book, is a well-recognized and reputable source for vehicle pricing and information provided by the National Automobile Dealers Association.¹ The NADA value report shows the "clean retail" value of a 2007 Chevrolet Tahoe as \$19,725, which Ally contends is the best evidence of the replacement value of the vehicle.

The standard the court is to use to value personal property acquired for personal, family, or household purposes is the property's "replacement value" as of the petition date, without deduction for costs of sale or marketing (§ 506(a)(2)); "replacement value," in turn, is defined as "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* Here, the debtor relied on the KBB "private party value," with no evidence that value approximates the price a retail merchant would charge for a vehicle of like kind. Ally, on the other hand, submitted evidence of the N.A.D.A. "clean retail" value of a vehicle of like kind, which may well come closer to the price a retail merchant would charge in general, but which does not factor in the options on the debtor's particular vehicle or its condition.

In reply, the debtor challenges Ally's use of the N.A.D.A. guide, suggesting N.A.D.A. values tend to be higher than actual replacement value. The debtor, however, takes his definition of replacement value from Assocs. Commer. Corp. v. Rash, 520 U.S. 953 (1997): "the price a willing buyer in the debtor's trade, business, or situation would pay to obtain like property from a willing seller" (520 U.S. at 960), and disregards the definition later added to the statute by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"): "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." § 506(a)(2). Since the enactment of BAPCPA, courts have applied a variety of methods to determine the replacement value of vehicles. See In re Gonch, 435 B.R. 857, 863-64 (Bankr. N.D.N.Y. 2010) (collecting cases); In re Morales, 387 B.R. 36, 45-47 (Bankr. C.D. Cal. 2008) (collecting cases). The debtor has cited no cases, however, and the court is aware of none, holding that the KBB private party value is determinative in and of itself, and the conclusion seems incorrect on its face, because a private seller is in a different economic position, vis-a-vis the buyer, than a retail merchant.

The debtor relies too heavily on In re Martinez, 409 B.R. 35 (Bankr. S.D.N.Y. 2009). In that case, the court held that "in the absence of any other evidence offered by the secured creditor, the Kelley Blue Book Private Party Value is an appropriate measure of the value of the automobile for the purposes of the § 1325(a)(5)(B)(ii) cram down provision." 409 B.R. at 37 (emphasis added). The court emphasized that the only indication of value submitted by the creditor was its

secured claim for a particular amount; the creditor did not attach any documentation to its claim to support that value, and did not oppose the debtor's objection to its claim, which was the procedure by which the debtor raised the issue of value. See id. at 38. And in In re Gonch, also relied on by the debtor, the court used the KBB private party value only as a starting point (435 B.R. at 865), adding:

The court's reliance on the private party value is based upon the only competent evidence in the record and applies only to the facts as they exist in this case. This ruling has no precedential effect on the question of the appropriate starting point for valuation. Although the NADA Clean Retail was not appropriate in this case, that does not mean it is never appropriate.

Id. at 865, n.10.

Here, the debtor has offered nothing more than the opinion that the vehicle is in good condition and that the KBB private party value for a vehicle of the same make, model, and year, in good condition, and having the same mileage and options as the debtor's is \$13,224. That is, the debtor's opinion is based solely on the KBB private party value, with no evidence the price a private party could sell for equates to what a retail merchant would charge. Ally's opinion of value, on the other hand, is likely more reflective of what a retail merchant would charge in general, but it does not take into account the condition of the debtor's vehicle in particular, as required for a finding under § 506(a)(2). In short, neither party has offered the court sufficient evidence to allow it to make the case-specific analysis necessary to determine the replacement value of the vehicle. See Morales, 387 B.R. at 41. Therefore, as the debtor has failed carry his burden of proof, the motion will be denied.

The court will hear the matter.

1 See In re Lopez, 2011 Bankr. LEXIS 5658, *10 (Bankr. E.D. Cal. 2011) ["The bankruptcy courts have universally accepted the Kelley Blue Book and the N.A.D.A. Guide as reliable sources for determining a vehicle's value.].

6. [14-21112](#)-D-13 SALVADOR ROJAS MOTION TO EXTEND AUTOMATIC STAY
SAC-2 2-6-14 [[15](#)]

Final ruling:

This matter was mistakenly calendared for this date. Matter removed from calendar.

7. [13-36214](#)-D-13 ROLAND/BEVERLY LAMONTAGNE MOTION TO VALUE COLLATERAL OF
AKH-2 BANK OF AMERICA, N.A.
2-18-14 [[17](#)]

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.

8. [13-34117](#)-D-13 ANTHONY/LISA JIMENEZ MOTION TO VALUE COLLATERAL OF
DN-2 STANFORD FEDERAL CREDIT UNION
2-14-14 [[31](#)]

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.

9. [10-48422](#)-D-13 JAROD BROCKMAN MOTION TO MODIFY PLAN
CYJ-2 2-10-14 [[38](#)]

10. [09-23128](#)-D-13 RAY/MARY SMITH CONTINUED MOTION TO MODIFY PLAN
ADR-6 12-31-13 [[84](#)]

11. [09-23128](#)-D-13 RAY/MARY SMITH
ADR-7

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF ATTORNEY DEBT
RESET, INC. FOR JUSTIN K.
KUNEY, DEBTORS' ATTORNEY(S),
FEES: \$1,680.00, EXPENSES:
\$0.00
2-18-14 [[92](#)]

Tentative ruling:

This is the application of the debtors' counsel in this case ("Counsel") for an award of additional attorney's fees. Counsel requests approval of \$1,680 in addition to the \$3,500 Counsel has already received. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

First, the court is concerned the debtors may not have been given sufficient notice that they have the right to oppose the application. Although the application opens by stating that "Applicant, Debtors' Counsel" files this briefing regarding the application, it closes with the statement that the debtors request the motion be granted. Further, the notice of hearing states that the debtors, through their attorney, are the moving parties. This language may have suggested to the debtors that they did not have the right to oppose the application. There is no indication in the moving papers that the debtors approve of the request.

Once the court is satisfied the debtors are aware of their right to oppose the application, the court will entertain any opposition they or any other party-in-interest may have. As a preliminary matter, however, there are several time entries that have been billed at the attorney's hourly rate, \$200, that are for services that were secretarial in nature, and therefore, not compensable. See Sousa v. Miquel, 32 F.3d 1370, 1374 (9th Cir. 1994). These include (1) calling the client to request documents and sending documents to the trustee (3/30/2009); (2) sending the financial course management instructions to the clients (4/23/2009); (3) reviewing a request for special notice (4/22/2009); (4) filing the certificate of completion of personal financial management course (6/2/2009); (5) sending copies of orders to the clients (9/9/2009, 4/15/2010); and (6) filing documents with the court (11/5/2010, 3/23/2010, 11/21/2013). The court will deduct the total billed for those services, \$300, from the request. The court also finds the charges of 0.5 hours each to fill in the three blanks in the court's standard-form order confirming plan and to prepare a four-sentence order valuing collateral (5/12/2009, 12/23/2009) to be excessive. The court will reduce those charges from \$100 each to \$60 each, and thus, will deduct \$80 from the request. These deductions will reduce the request to \$1,300. Should any party-in-interest have opposition to any other portions of the request, the court will entertain such opposition at the hearing.

The court will hear the matter.

12. [13-34930](#)-D-13 TINA AYERS
LTF-1

MOTION TO CONFIRM PLAN
1-29-14 [[27](#)]

13. [12-38236](#)-D-13 ALLAN/KAREN TELLEZ MOTION TO MODIFY PLAN
RWH-2 1-31-14 [[54](#)]

14. [13-29736](#)-D-13 ERIN POTTER MOTION TO CONFIRM PLAN
JM-3 1-8-14 [[59](#)]

Final ruling:

This case was dismissed on January 23, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

15. [10-50037](#)-D-13 ANTHONY/EVELIA ADAMS MOTION TO APPROVE LOAN
MCB-2 MODIFICATION
2-10-14 [[63](#)]

16. [13-34543](#)-D-13 NEAL/MERCEDES MEYERS MOTION TO CONFIRM PLAN
MJH-2 1-15-14 [[29](#)]

Final ruling:

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

17. [13-35043](#)-D-13 MILLARD/DONNA HASLAM CONTINUED MOTION TO VALUE
DN-1 COLLATERAL OF CHASE
12-24-13 [[18](#)]

Final ruling:

This case was dismissed on March 13, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

18. [13-35043](#)-D-13 MILLARD/DONNA HASLAM CONTINUED OBJECTION TO
RCO-1 CONFIRMATION OF PLAN BY
JPMORGAN CHASE BANK, N.A.
1-9-14 [[25](#)]

Final ruling:

This case was dismissed on March 13, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

19. [13-29144](#)-D-13 FRANCISCO ITURBIDE MOTION TO VALUE COLLATERAL OF
PGM-3 WELLS FARGO BANK, N.A.
2-13-14 [[76](#)]

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.

20. [10-36147](#)-D-13 SEAN DAVIS
CJY-1

MOTION TO MODIFY PLAN
2-6-14 [[47](#)]

Final ruling:

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

21. [13-21348](#)-D-13 ROBERT/KAYLA RENCH
JCK-1

MOTION TO MODIFY PLAN
2-11-14 [[22](#)]

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.

22. [14-21048](#)-D-13 LARRY MENTON
ADR-1
SOPHIA VO VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
2-17-14 [[11](#)]

Final ruling:

This matter is resolved without oral argument. This is Sophia Vo's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that the debtor only has a possessory interest in the subject property and the moving party's interest in the property is not adequately protected. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay and waive Rule 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

23. [13-35356](#)-D-13 ESTHER/MAURILIO GOMEZ
JM-1

MOTION TO VALUE COLLATERAL OF
NATIONSTAR
1-16-14 [[29](#)]

Final ruling:

This is the debtors' motion to value collateral of Nationstar. The motion will be denied because the moving parties failed to serve Nationstar in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Nationstar (1) by certified mail at a street address with no attention line; and (2) by first-class mail at a street address with no attention line. Both methods were insufficient because service on a corporation, partnership, or other unincorporated association must be to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there was no attention line. The first method was insufficient for the additional reason that service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be by first-class mail, not certified mail. See preamble to Fed. R. Bankr. P. 7004(a). The court notes also that a Notice of Returned Mail has been filed indicating that mail sent by the Bankruptcy Noticing Center to the address of Nationstar used by the moving parties for service of this motion has been returned as undeliverable.

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

24. [13-26259](#)-D-13 JAGROOP SINGH MOTION TO AVOID LIEN OF HSBC
MJK-6 BANK NEVADA, N.A.
2-10-14 [[164](#)]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

25. [10-52762](#)-D-13 RICHARD CAIN MOTION TO MODIFY PLAN
DN-4 1-24-14 [[76](#)]

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. [12-29063](#)-D-13 ABDOL/JALEH KHOIE
JCK-2

MOTION TO MODIFY PLAN
1-30-14 [[33](#)]

Final ruling:

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

27. [14-20864](#)-D-13 JOAQUIN/MARTHA RAMON
TOG-1

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
2-16-14 [[8](#)]

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.

28. [11-37574](#)-D-13 SANTIAGO VALENCIA GALVEZ
AND MARIA VALENCIA

CONTINUED NOTICE OF DEFAULT AND
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-6-13 [[29](#)]

Tentative ruling:

This is the debtors' objection to the trustee's Notice of Default and Intent to Dismiss Case. The hearing was continued to permit the debtors to address some service issues, which they have done. The notice of continued hearing was a notice pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

On November 6, 2013, the trustee issued a Notice of Default and Intent to Dismiss Case, indicating that the debtors were delinquent in their plan payments in the amount of \$12,106.68, with an additional \$3,441 coming due November 25, 2013. The debtors contend, on the other hand, they have made all the payments called for by their confirmed plan. The problem, in their view, arises because they have made

their plan payments in accordance with a loan modification agreement between the debtors and GMAC Mortgage ("GMAC"), whereas GMAC has sent the trustee a request for a monthly payment in a different amount from the amount called for by the modification agreement. The debtors contend GMAC has never alleged the modification agreement is not valid, and did not challenge the confirmed plan.

The debtors have filed as an exhibit a purported pre-petition loan modification agreement to support the amount they claim is, and has been, their ongoing mortgage payment. The modification agreement states that the monthly payment of principal and interest, for the first five years, is to be in a particular stated amount, and that the escrow payment, also in a particular stated amount, would adjust yearly after year 1. The modification agreement stated that the total mortgage payment was to be \$1,900.80, including the escrow payment, and this is the amount the debtors provided for in their confirmed plan.

By contrast, the Proof of Claim Breakdown Sheet attached to GMAC's proof of claim shows the "first post petition payment amount" as a much higher amount. This court's standard-form chapter 13 plan, and thus, the debtors' plan in this case, provides that in the case of a conflict between the plan and a creditor's filed proof of claim, the proof of claim controls. Chapter 13 Plan, filed July 18, 2011, ¶ 3.04. Further, "dividends shall be paid based upon the proof of claim unless the granting of a valuation or a lien avoidance motion, or the sustaining of a claim objection, affects the amount or classification of the claim." *Id.* Thus, in this case, if the debtors disagreed with GMAC's proof of claim, it was up to them to object to the claim. Further, pursuant to Fed. R. Bankr. P. 3002.1(e), it is up to the debtor to object to a notice of mortgage payment change. (GMAC has filed two, each showing a different monthly payment amount.) The trustee's first Notice of Default and Intent to Dismiss Case was filed August 29, 2013. Yet the debtors, to date, have not objected to the claim or to GMAC's notices of mortgage payment change. Thus, although the debtors may have made all the plan payments specifically listed in the plan, they have not complied with the plan provision that GMAC's proof of claim controls the amount of the payments it is entitled to receive under the plan. In short, the debtors have not made all the payments required by the plan.

The court is also concerned as to whether the loan modification agreement was ever actually finalized. The copy filed by the debtors is signed by the debtors but is not signed on behalf of GMAC. The notion that the modification agreement was never finalized is supported by the fact that there is a very large discrepancy between the amount of pre-petition mortgage arrears listed by the debtors in their plan and the amount listed by GMAC on its proof of claim.

For the reasons stated, the court concludes that the debtors have failed to make all the payments required by the plan. Accordingly, the debtors' objection to the trustee's Notice of Default and Intent to Dismiss Case will be overruled.

The court will hear the matter.

29. [11-37574](#)-D-13
RDG-2

SANTIAGO VALENCIA GALVEZ
AND MARIA VALENCIA

CONTINUED MOTION TO DISMISS
CASE, MOTION TO DISMISS CASE
FOR UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND
MOTION TO DISMISS CASE FOR

30. [13-34175](#)-D-13 ENRIQUE/ELDA GONZALEZ
HWW-1

CONTINUED MOTION TO VALUE
COLLATERAL OF FINANCIAL CENTER
CREDIT UNION
12-24-13 [[27](#)]

Tentative ruling:

This is the debtors' motion to value collateral of Financial Center Credit Union (the "Credit Union"); namely, a second position deed of trust against the debtors' residence, at \$0. The Credit Union filed opposition to the motion, and the hearing was continued to allow the parties to submit additional evidence. For the following reasons, the motion will be denied.

As a preliminary matter, the court is aware of the debtors' purported withdrawal of this motion, filed March 7, 2014, after the Credit Union filed its opposition, after the initial hearing was held, and after supplemental evidence was due. A moving party may not unilaterally withdraw a motion after the opposing party has filed opposition. See Fed. R. Civ. P. 41(a)(2), incorporated herein by Fed. R. Bankr. P. 7041 and 9014(c). Construing the purported withdrawal as a request to dismiss the motion, the request is denied.

Second, the court has reviewed the debtors' reply to the Credit Union's original opposition. The debtors contended that because their motion was brought pursuant to LBR 9014-1(f)(1), written opposition, including evidence, was required to be filed 14 days prior to the hearing date, and because the Credit Union failed to file an appraisal before that deadline, the motion should be granted. The court disagrees. The local rule states that "[w]ithout good cause," no party shall be heard in opposition to a motion if written opposition has not been timely filed. LBR 9014-1(f)(1)(B).¹ In this situation, the court finds good cause as follows. Debtors control the timing of motions to value collateral; thus, they may take the time they need to obtain their own supporting evidence before filing their motions. Creditors, however, may receive as little as 14 days' notice (and sometimes less) of the deadline for filing their opposition. (In this case, the debtors' motion was served on precisely 28 days' notice, the minimum allowable. Assuming the moving papers were received the next day, the Credit Union had less than 14 days to file its opposition, and under the debtors' interpretation of the local rule, less than 14 days to obtain its appraisal and supporting declaration.) Thus, it is this department's policy to allow creditors time to obtain an appraisal even after the deadline for filing opposition to an (f)(1) motion has passed.

Turning to the merits of the motion, there is a deed of trust on the property that is senior to the Credit Union's deed of trust - the senior lien secures a claim in the amount of \$138,723. Thus, if the value of the property is more than \$138,723, the debtors may not value the Credit Union's claim under § 506(a) of the Bankruptcy Code. The debtors' evidence of value consists of the debtors'

declaration, as follows: "It is our opinion that the value of the residence was \$135,000.00 on the date our case was filed." Debtors' Decl., filed Dec. 24, 2013, at 2:4-5. The Credit Union has submitted a declaration of and appraisal by real estate appraiser Gregory L. Levitt, who testifies that in his opinion, the value of the property as of the petition date was \$150,000.

A homeowner may testify to his or her opinion of the value of his or her property. 2 Russell, Bankruptcy Evidence Manual § 701:2, pp. 784-85 (West 2012-2013 ed.). However, as against the testimony of an individual with professional experience as a real estate appraiser, the court gives greater weight to the opinion of the appraiser. Thus, in this case, the court accords greater weight to Mr. Levitt's opinion than to the debtors', and concludes that the fair market value of the property is \$150,000. As such, there is equity in the property over and above the amount due on the senior lien, and the motion will be denied.

The court will hear the matter.

1 See also S. Cal. Edison Co. v. Lynch, 307 F.3d 794, 807 (9th Cir. 2002) (citation omitted) ["District courts have 'inherent power' to control their dockets."].

31. [13-33876](#)-D-13 SHAWN CRARY CONTINUED MOTION TO CONFIRM
LRR-2 PLAN
12-17-13 [[25](#)]

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.

32. [14-20979](#)-D-13 VICTOR/VARNA FACHA MOTION TO VALUE COLLATERAL OF
JMW-1 PNC BANK, N.A.
2-7-14 [[8](#)]

Final ruling:

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

33. [12-35682](#)-D-13 CHARLES/TAMMY CARSTERSEN CONTINUED OBJECTION TO DEBTORS'
RDG-2 CLAIM OF EXEMPTIONS
12-13-13 [[133](#)]

Final ruling:

By stipulation of the parties, the hearing on this matter has been continued to April 15, 2014, at 10:00 a.m.

34. [13-35783](#)-D-13 ALDRICH FLORES AND KAREN MOTION TO VALUE COLLATERAL OF
MDL-1 VIGILIA GREEN TREE SERVICING, LLC AND
OF BANK OF AMERICA
1-23-14 [[25](#)]

Tentative ruling:

This is the debtors' motion to value collateral of "Green Tree Servicing, LLC and/or Bank of America" consisting of a second position deed of trust against the debtors' residence. The motion will be denied because, although the moving parties served Bank of America in accordance with Fed. R. Bankr. P. 7004(h) (by certified mail to the attention of an officer), they failed to serve Green Tree Servicing, LLC ("Green Tree") in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Green Tree by certified mail to the attention of an officer, whereas for corporations, partnerships, and other unincorporated associations that are not FDIC-insured institutions, service must be by first-class mail. See preamble to Fed. R. Bankr. P. 7004(b). If service by certified mail on a corporation that is not FDIC-insured were appropriate, the distinction in the manner of service between Rule 7004(b)(3) and Rule 7004(h) would be superfluous. Thus, the court will deny the motion. Alternatively, the court will continue the hearing to allow the moving parties to cure this service defect.

The court will hear the matter.

35. [13-35783](#)-D-13 ALDRICH FLORES AND KAREN MOTION TO AVOID LIEN OF ASSET
MDL-2 VIGILIA ACCEPTANCE, LLC
1-23-14 [[31](#)]

Tentative ruling:

This is the debtors' motion to avoid a judicial lien held by "Asset Acceptance LLC[,] subsidiary of Asset Acceptance Capital Corporation." The motion will be denied because the moving parties failed to serve the Asset Acceptance entities in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Asset Acceptance Capital Corp. and Asset Acceptance LLC by certified mail to the attention of a named officer or other officer, managing or general agent, whereas for corporations, partnerships, and other unincorporated associations that are not FDIC-insured institutions, service must be by first-class mail. See preamble to Fed. R. Bankr. P. 7004(b). If service

by certified mail on a corporation that is not FDIC-insured were appropriate, the distinction in the manner of service between Rule 7004(b)(3) and Rule 7004(h) would be superfluous.

Further, the proof of service states that the documents served were a motion to value collateral, points and authorities supporting a motion to value collateral, and so on, whereas this is a motion to avoid a judicial lien, and the titles of the moving papers all refer to the motion as such. As a result of these service defects, the court will deny the motion. Alternatively, the court will continue the hearing to allow the moving parties to cure these service defects.

The court will hear the matter.

36. [12-29585](#)-D-13 MICHAEL/SANDRA TANSLEY MOTION TO MODIFY PLAN
JCK-2 2-11-14 [[43](#)]

Final ruling:

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

37. [12-34189](#)-D-13 SUSAN KRALJ MOTION TO MODIFY PLAN
EJS-3 1-29-14 [[108](#)]

Final ruling:

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

38. [13-24789](#)-D-13 RONALD/NICOLE TILLMAN MOTION TO MODIFY PLAN
MC-2 1-30-14 [[54](#)]

39. [11-20490](#)-D-13 ROBERT/GINA DAVIS CONTINUED MOTION TO MODIFY PLAN
DMR-1 12-26-13 [[76](#)]
40. [11-39090](#)-D-13 STANFORD/DONNA MORRISON MOTION TO MODIFY PLAN
DN-7 1-29-14 [[103](#)]
41. [10-52199](#)-D-13 MICHAEL MICHALETO AND MOTION TO MODIFY PLAN
DN-5 SHAWN ODELL-MICHALETO 1-29-14 [[79](#)]
42. [14-20100](#)-D-13 VENISA WOOLDRIDGE OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
2-24-14 [[35](#)]

43. [13-36215](#)-D-13 CINDY/DONAL LEE OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
2-24-14 [[18](#)]

44. [14-20022](#)-D-13 DULCE MANCINAS OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
2-24-14 [[23](#)]

Tentative ruling:

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. One of the trustee's objections is that the plan lists no creditors. Thus, it appears the objection is directed to the debtor's original plan filed in this case. On January 23, 2014, the debtor filed an amended chapter 13 plan which, like the original one, listed no creditors. However, on February 18, 2014, the debtor filed a second amended chapter 13 plan which lists one creditor. As a result of the filing of the second amended plan, the trustee's objection is moot. The objection will be overruled as moot.

The debtor should note that the filing of the second amended plan, by itself, is not sufficient to allow the plan to be confirmed. In the event the trustee's motion to dismiss, which is on the court's March 18, 2014 calendar at 10:30 a.m., is denied and the case remains open, the debtor will need to file and serve an appropriate motion to confirm the second amended plan, as required by LBR 3015-1(d)(1). The debtor is advised that there are other rules - in the Federal Rules of Bankruptcy Procedure and in this court's local rules - that come into play when a motion is filed; the debtor is advised to review them.

The court will overrule the objection as moot. The court will hear the matter.

45. [14-20022](#)-D-13 DULCE MANCINAS OBJECTION TO CONFIRMATION OF
PLAN BY NATIONSTAR MORTGAGE,
LLC
2-26-14 [[29](#)]

Tentative ruling:

This is the objection of Nationstar Mortgage, LLC ("Nationstar") to confirmation of the debtor's proposed chapter 13 plan. As Nationstar points out, the debtor has filed an amended plan and a second amended plan in addition to the original plan. Nationstar states that its objection will focus on the latest amended plan. However, the court's local rules provide for an objection to confirmation of a debtor's original plan (see LBR 3015-1(c)(4)), not an amended one. The procedure for objecting to a debtor's amended plan is to oppose the debtor's motion to confirm the plan. See LBR 3015-1(d). As the debtor has not filed a motion to confirm either of the amended plans, those plans are not in a posture to be considered by the court at this time. In short, as a result of the filing of the second amended plan, Nationstar's objection is moot. The objection will be overruled as moot.

The court will hear the matter.

46. [10-25027](#)-D-13 PETER/AUGUSTINE MONDOT CONTINUED MOTION FOR CONSENT TO
RAC-10 ENTER INTO LOAN MODIFICATION
AGREEMENT
1-27-14 [[152](#)]

47. [10-25027](#)-D-13 PETER/AUGUSTINE MONDOT CONTINUED MOTION TO MODIFY PLAN
RAC-11 1-27-14 [[160](#)]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. 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 by minute order. No appearance is necessary.

48. [11-36435](#)-D-13 DAVID ROSS AND SONJA MOTION FOR RELIEF FROM
TBK-8 LEWIS AUTOMATIC STAY
DAVID ROSS VS. 2-26-14 [[142](#)]

**DISMISSED 11/10/11 AS TO
SONJA LEWIS ONLY**

49. [14-21035](#)-D-13 QUANG NGUYEN MOTION TO EXTEND AUTOMATIC STAY
DAT-1 2-22-14 [[11](#)]

Final ruling:

This is the debtor's motion to extend the automatic stay pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The motion will be denied for the following reason.

The debtor was a debtor in a case pending within the year prior to the commencement of this case; the prior case was dismissed other than under § 707(b) of the Code. Thus, pursuant to § 362(c)(3)(A), the stay in this new case terminated on the 30th day after it was filed. This case was filed February 3, 2014; the 30th day after that date was March 5, 2014. Pursuant to § 362(c)(3)(B), the stay may be extended after notice and a hearing completed within the 30-day period if the debtor demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. In this case, the 30-day period has come and gone, and the hearing was not completed within that time period. (The court notes that the moving party originally set this motion for hearing on an earlier date, but was advised by the

Clerk's office that the matter would need to be set for a date shown on the court's self-set calendar for hearings in Sacramento chapter 13 cases. The moving party then filed and served a notice of hearing setting the matter for this date. However, the date originally chosen by the moving party, March 11, 2014, was itself after the expiration of the 30-day period.)

Because the hearing on the motion was not held and completed within the 30 days following the commencement of this case, the motion will be denied by minute order. No appearance is necessary.

50. [14-20036](#)-D-13 MICAELA TORRES OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
2-24-14 [[39](#)]

51. [14-20141](#)-D-13 FRANK/ELIZABETH MENDEZ OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
2-24-14 [[30](#)]

52. [13-35356](#)-D-13 ESTHER/MAURILIO GOMEZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
2-24-14 [[45](#)]

Final ruling:

This is the trustee's objection to confirmation of the debtors' proposed chapter 13 plan. On February 26, 2014, the debtors filed an amended plan. As a result of the filing of the amended plan, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

53. [10-53864](#)-D-13 ANTHONY/NANCY BORGES MOTION TO VALUE COLLATERAL OF
JDP-1 WELLS FARGO BANK, N.A.
2-24-14 [[48](#)]
54. [13-36179](#)-D-13 ROMEO/JENNY HERNANDEZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
2-24-14 [[41](#)]
55. [13-36096](#)-D-13 ROSE RAMIREZ OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
2-24-14 [[27](#)]

Final ruling:

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. On February 27, 2014, the debtor filed an amended plan. As a result of the filing of the amended plan, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.