

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Modesto, California

**June 11, 2019 at 10:00 a.m.**

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**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

**1. Matters resolved without oral argument:**

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

**2. The court will not continue any short cause evidentiary hearings scheduled below.**

**3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.**

**4. If no disposition is set forth below, the matter will be heard as scheduled.**

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1. [17-91002](#)-D-13 HUBERTO/MARIA MENDOZA MOTION TO MODIFY PLAN  
[TOG-2](#) 4-30-19 [[58](#)]

2. [16-90304](#)-D-13 JOHN DEMING MOTION TO MODIFY PLAN  
[DCJ-11](#) 4-30-19 [[248](#)]

3. [19-90010](#)-D-13 SHALEAH WALKER MOTION TO CONFIRM PLAN  
[BSH-2](#) 5-3-19 [[31](#)]

**Final ruling:**

This is the debtor's motion to confirm a first amended chapter 13 plan. On May 30, 2019, the debtor filed a second amended plan and a motion to confirm it. As a result of the filing of the second amended plan, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

4. [18-90714](#)-D-13 JARED MEEK AND LAUREN MOTION TO VALUE COLLATERAL OF  
[BSH-2](#) LONGWELL CITIZENS BANK, N.A.  
5-8-19 [[75](#)]

**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.

5. [19-90415](#)-D-13 LEWIS/JOSEFA HAMPTON MOTION TO VALUE COLLATERAL OF  
[BSH-1](#) ONEMAIN FINANCIAL  
5-3-19 [[10](#)]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

6. [17-90520](#)-D-13 DENNIS/SONYA GILBREATH MOTION TO MODIFY PLAN  
[RS-2](#) 4-29-19 [[58](#)]

**Final ruling:**

This is the debtors' motion to confirm a modified chapter 13 plan. The motion will be denied because the moving parties failed to utilize the current form of the plan made mandatory in this district on December 1, 2017, as amended by the form made mandatory effective on November 9, 2018. The motion will be denied by minute order. No appearance is necessary.

7. [19-90222](#)-D-13 JOSHUA/LOTTIE JIMENEZ OBJECTION TO CONFIRMATION OF  
[RDG-1](#) PLAN BY RUSSELL D. GREER  
5-13-19 [[24](#)]
8. [18-90923](#)-D-13 ESTHER CORTEZ MOTION FOR SANCTIONS FOR  
[BSH-3](#) VIOLATION OF THE AUTOMATIC STAY  
5-8-19 [[57](#)]
- Final ruling:**
- Pursuant to the order entered on June 5, 2019 the hearing on this motion is continued to July 9, 2019 at 10:00 a.m. No appearance is necessary on June 11, 2019.
9. [18-90924](#)-D-13 MOSES/TONYA SMITH CONTINUED MOTION FOR RELIEF  
[RAS-1](#) FROM AUTOMATIC STAY  
U.S. BANK, N.A. VS. 3-13-19 [[16](#)]
10. [19-90224](#)-D-13 JESUS PANTOJA AND MARIA OBJECTION TO CONFIRMATION OF  
[RDG-1](#) DE PANTOJA PLAN BY RUSSELL D. GREER  
5-13-19 [[17](#)]

**Final ruling:**

**Objection withdrawn by moving party. Matter removed from calendar.**

11. [19-90225](#)-D-13 RAMON/CELINA JARA  
[MSK](#)-1 OBJECTION TO CONFIRMATION OF  
PLAN BY LAKEVIEW LOAN  
SERVICING, LLC  
5-15-19 [[22](#)]

12. [19-90225](#)-D-13 RAMON/CELINA JARA  
[RDG](#)-1 OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
5-13-19 [[19](#)]

**Final ruling:**

**The debtors filed a statement of non-opposition. As such, the Trustee's objection to confirmation of plan will be sustained by minute order. No appearance is necessary.**

13. [18-90326](#)-D-13 EDWARD/CYNTHIA ROCHA  
[RDG](#)-2 OBJECTION TO LATE FILED CLAIM  
OF STANISLAUS COUNTY TAX  
COLLECTOR, CLAIM NUMBER 21  
5-1-19 [[62](#)]

14. [19-90326](#)-D-13 RICHARD/RITA MARTORANO  
[PLG](#)-1 MOTION TO CONFIRM PLAN  
5-3-19 [[10](#)]

15. [18-90337](#)-D-13 MICHAEL/JOSEFINA GORMAN MOTION TO MODIFY PLAN  
[PGM-2](#) 4-28-19 [[43](#)]

16. [19-90237](#)-D-13 KENNETH/SAMANTHA CLEMENS MOTION TO VALUE COLLATERAL OF  
[ADR-1](#) CAPITAL ONE AUTO FINANCE  
5-14-19 [[29](#)]

**Tentative ruling:**

This is the debtors' motion to value collateral of Capital One Auto Finance; namely, a 2012 Toyota Tacoma. The motion was served on Capital One, N.A., by certified mail to the attention of an officer and by first-class mail on Capital One, N.A. to the attention of an officer, but at the address of a corporate agent for service of process. The motion was not served on the attorneys who had, 19 days earlier, filed an objection to confirmation addressing the valuation of the collateral that is the subject of this motion - an objection that is also on this calendar. Such service may or may not have been required by Fed. R. Bankr. P. 7004(b) or (h) 1 - the court need not decide because, in any event, the notice of hearing did not comply with the court's local rule. The notice of hearing purported to require the filing of written opposition 14 days prior to the hearing date, but it did not include the cautionary language required by LBR 9014-1(d) (3) (B) (ii) or any similar caution. As a result, the court will hear the matter as a motion noticed pursuant to LBR 9014-1(f) (2).

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1 The court would need to consider whether the potential respondent is properly viewed as Capital One Auto Finance or as Capital One, N.A., an FDIC-insured institution. In the latter case, subdivision (1) of Fed. R. Bankr. P. 7004(h) would come into play and require service on the attorneys who had filed the objection to confirmation.

17. [19-90237](#)-D-13 KENNETH/SAMANTHA CLEMENS MOTION TO VALUE COLLATERAL OF  
[ADR-2](#) AMERICREDIT FINANCIAL SERVICES,  
INC.  
5-15-19 [[33](#)]

18. [19-90237](#)-D-13 KENNETH/SAMANTHA CLEMENS OBJECTION TO CONFIRMATION OF  
[CAS-1](#) PLAN BY CAPITAL ONE AUTO  
FINANCE  
4-25-19 [[21](#)]

19. [19-90237](#)-D-13 KENNETH/SAMANTHA CLEMENS OBJECTION TO CONFIRMATION OF  
[RDG-1](#) PLAN BY RUSSELL D. GREER  
5-13-19 [[26](#)]

20. [19-90145](#)-D-13 ALAIN NOGUES MOTION TO CONFIRM PLAN  
[BSH-2](#) 5-3-19 [[35](#)]

**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 referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

21. [19-90146](#)-D-13 LEVON GADSON MOTION TO CONFIRM PLAN  
[LG-1](#) 4-30-19 [[44](#)]

**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) with one exception, the moving party failed to serve the eight creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); (2) the moving party failed to serve two of the three creditors requesting special notice in this case at their designated addresses, as required by the same rule; and (3) the proof of service of each document is attached to the document rather than being filed separately, as required by the court's local rules.

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

22. [18-90947](#)-D-13 RONALD HOLLIS MOTION TO CONFIRM PLAN  
[BSH](#)-2 5-3-19 [[35](#)]

**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 referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

23. [19-90252](#)-D-13 ERIC/HEATHER OLSON OBJECTION TO CONFIRMATION OF  
[RDG](#)-1 PLAN BY RUSSELL D. GREER  
5-13-19 [[18](#)]

**Final ruling:**

Objection withdrawn by moving party. Matter removed from calendar.

24. [17-90153](#)-D-13 JASON UNDERWOOD CONTINUED MOTION FOR  
[PSB](#)-5 COMPENSATION BY THE LAW OFFICE  
OF BAINS LEGAL, PC FOR PAULDEEP  
BAINS, DEBTOR'S ATTORNEY(S)  
4-4-19 [[92](#)]

**Final ruling:**

This motion was granted by an order entered on June 3, 2019. As a result this matter is removed from calendar as moot. No appearance is necessary.

25. [18-90653](#)-D-13 RICARDO MARQUEZ OBJECTION TO CLAIM OF  
[RDG](#)-3 DEPARTMENT STORES NATIONAL  
BANK, CLAIM NUMBER 12  
5-1-19 [[41](#)]

26. [15-90855](#)-D-13 PHILLIP/NECY LOPEZ  
[TOG](#)-7

MOTION TO MODIFY PLAN  
4-24-19 [[76](#)]

27. [19-90155](#)-D-13 MYRNA VIZCAINO  
[RDG](#)-1

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
4-29-19 [[18](#)]

**Final ruling:**

This is the trustee's objection to the debtor's claim of exemptions. The trustee objected on the ground the debtor had claimed exemptions under statutes selected from the two mutually-exclusive sets of exemption statutes available to bankruptcy debtors in California. On May 6, 2019, the debtor filed an amended Schedule C on which she claimed all of her exemptions under statutes selected from a single set of exemption statutes. As a result of the filing of the amended Schedule C, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

28. [19-90266](#)-D-13 VERONICA CHAIDEZ  
[RDG](#)-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
5-13-19 [[18](#)]

**Final ruling:**

This case was dismissed on May 29, 2019. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

29. [17-90869](#)-D-13 KAY PARKER  
[18-9005](#) DLE-2  
PARKER V. MID VALLEY  
FINANCIAL, INC. ET AL

CONTINUED MOTION FOR JUDGMENT  
ON THE PLEADINGS, MOTION FOR AN  
ORDER ABSTAINING FROM HEARING  
AND/OR MOTION TO DISMISS CASE  
4-22-19 [[72](#)]

**Tentative ruling:**

This is the motion of defendant Mid Valley Services, Inc. ("Mid Valley") (1) as to certain claims, for judgment on the pleadings, pursuant to Fed. R. Civ. P. 12(c) and (h) (2) (B), incorporated herein by Fed. R. Bankr. P. 7012(b), for failure to state a claim upon which relief can be granted; and (2) as to other claims, pursuant to 28 U.S.C. § 1334(c) (1) and/or (c) (2), that the court abstain from hearing the claims and dismiss them with prejudice. The plaintiff, Kay Parker ("Parker"), has filed opposition and Mid Valley has filed a reply. For the following reasons, the motion will be denied and the court will stay this adversary proceeding pending the outcome of Parker's pending appeal, as discussed below.



"Judgment on the pleadings is proper when, taking all the allegations in the pleadings as true and construed in the light most favorable to the nonmoving party, the moving party is entitled to judgment as a matter of law." Living Designs, Inc. v. E.I. Dupont de Nemours & Co., 431 F.3d 353, 360 (9th Cir. 2005). In this case, because Mid Valley relies on Rule 12(h) (2) (failure to state a claim) by way of Rule 12(c) (judgment on the pleadings), Mid Valley is raising the question whether Parker's amended complaint states a claim upon which relief can be granted.

In determining whether a pleading states a claim upon which relief can be granted, the court "accept[s] as true all facts alleged in the complaint, and draw[s] all reasonable inferences in favor of the plaintiff." al-Kidd v. Ashcroft, 580 F.3d 949, 956 (9th Cir. 2009), citing Newcal Indus., Inc. v. Ikon Office Solution, 513 F.3d 1038, 1043 n.2 (9th Cir. 2008). The court assesses whether the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" al-Kidd, 580 F.3d at 949, citing Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009), in turn quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

Parker's claims that are the subject of the motion for judgment on the pleadings are her (1) First Claim for Relief - for recovery and turnover of property of the estate; (2) Count 1 of her Third Claim for Relief - for breach of the automatic stay; and (3) Count 3 of her Third Claim for Relief - for violation of federal "loss prevention mitigation regulations."

The court will begin with the second - the claim for breach of the automatic stay. Mid Valley correctly points out that the court has ruled Mid Valley did not violate the stay when it conducted its foreclosure sale or when it earlier postponed the sale from time to time. The court made that ruling in an order in this and two other adversary proceedings, AP Nos. 18-9016 and 19-9004 (the "Order" or "Order After Hearing"), and the debtor attached a copy of the Order to a notice of appeal she filed April 22, 2019. The Bankruptcy Appellate Panel has expressly taken that notice of appeal as an appeal from the Order After Hearing.<sup>1</sup> The court is persuaded the pending appeal divests this court of jurisdiction to enter judgment on the pleadings based on the very order that is on appeal - the Order After Hearing, the purpose of which was the finding that the foreclosure sale and earlier postponements of it did not violate the stay.

The timely filing of a notice of appeal to either a district court or bankruptcy appellate panel will typically divest a bankruptcy court of jurisdiction "over those aspects of the case involved in the appeal." The bankruptcy court retains jurisdiction over all other matters that it must undertake "to implement or enforce the judgment or order," although it "may not alter or expand upon the judgment." If a party wants to stay all of the proceedings in bankruptcy court while an appeal is pending, it must file a motion for a stay.

Sherman v. SEC (In re Sherman), 491 F.3d 948, 967 (9th Cir. 2007), quoting Nearby v. Padilla (In re Padilla), 222 F.3d 1184, 1190 (9th Cir. 2000). In Padilla, for example, the court held that a pending appeal from an order reversing an order dismissing a bankruptcy case divested the bankruptcy court of jurisdiction to enter a discharge and close the case. Padilla, 222 F.3d at 1190 [discharge and closing "drastically changed the status quo and amounted to a final adjudication of the substantial rights directly involved in the appeal" and "did not constitute implementation or enforcement of the BAP's judgment reversing and remanding for reinstatement of [the debtor's] petition."].

It might be argued that a judgment on the pleadings based on the absence of a stay violation would be merely an act implementing or enforcing the Order After Hearing. The court finds, however, that instead, the requested judgment on the pleadings would drastically change the status quo and affect the substantial rights directly involved in the appeal. Thus, the court concludes it does not have jurisdiction to rule on the question of violation of the automatic stay, and the aspect of the motion seeking judgment on the pleadings based on the Order After Hearing will be denied without prejudice for lack of jurisdiction. Further, the court will stay this adversary proceeding pending the outcome of the appeal.

The court finds there is sufficient commonality among Parker's claims for recovery and turnover of estate property (First Claim for Relief), for breach of the automatic stay (Count 1 of her Third Claim for Relief), and for violation of federal "loss prevention mitigation regulations" (Count 3 of her Third Claim for Relief) that it would be imprudent to proceed with the first and third of these claims while staying the second. The turnover claim is expressly based in part on the allegation of a stay violation; thus, it should clearly be stayed. Although the claim for breach of the "loss prevention mitigation regulations" (the federal Real Estate Settlement Procedures Act) is not directly based on the alleged stay violation, as a matter of judicial economy, it would be best to stay it as well, as there is no urgency in the resolution of that particular claim while the others are pending.

Mid Valley's request for abstention will also be denied without prejudice. Parker's claims that are the subject of this request are her (1) Second Claim for Relief - to compel Mid Valley to accept a "tender [of] the full payment of the debt owed to Mid Valley as a condition of setting aside the wrongful foreclosure and restoring the status quo" (Parker's First Amended Complaint, filed May 30, 2018, at 9:22-23), or in the alternative, for monetary damages, including treble and punitive damages; (2) Count 2 of her Third Claim for Relief - for violation of her rights under the California Survivor's Bill of Rights and the California Homeowner's Bill of Rights; and (3) her Fourth Claim for Relief - for cancellation of the trustee's deed upon sale - the deed transferring the property from Mid Valley to its co-defendant, Harminder Deol - as void.

Absent recent developments, the court would have been inclined to grant the request for abstention - if not mandatory abstention, then certainly permissive abstention, based on the predominantly state law nature of the claims. However, Parker's opposition reveals that, after this court remanded Harminder Deol's unlawful detainer action (AP No. 18-9016) to the state court, Deol dismissed it. Mid Valley's reply points out that Parker's complaint to quiet title, etc., which she filed in the state court late last year and which defendant Harminder Deol removed to this court in January of this year as AP No. 19-9004, has been dismissed for lack of prosecution. Thus, so far as the court is aware, there is no pending state court action between or among the parties.

Abstention can exist only where there is a parallel proceeding in state court. That is, inherent in the concept of abstention is the presence of a pendent state action in favor of which the federal court must, or may, abstain. See, e.g., In re S.G. Phillips Constrs., Inc., 45 F.3d 702, 708 (2d Cir. 1995) (including as a requirement for mandatory abstention the presence of a previously commenced state action); In re Tucson Estates, 912 F.2d 1162, 1167 (9th Cir. 1990) (recognizing as a factor for permissive abstention the presence of a related proceeding commenced in state court or other nonbankruptcy court).

To require a pendent state action as a condition of abstention eliminates any confusion with 28 U.S.C. § 1452(b), which provides district courts with the authority to remand civil actions properly removed to federal court, in situations where there is no parallel proceeding. Section 1334(c) abstention should be read in pari materia with section 1452(b) remand, so that the former applies only in those cases in which there is a related proceeding that either permits abstention in the interest of comity, section 1334(c) (1), or that, by legislative mandate, requires it, section 1334(c) (2).

Security Farms v. International Bhd. of Teamsters, 124 F.3d 999, 1009-10 (9th Cir. 1997); see also Schulman v. California (In re Lazar), 237 F.3d 967, 981-82 (9th Cir. 2001); Redd v. Sinclair (In re Redd), 2005 Bankr. LEXIS 3405, \*7, n.8 (9th Cir. BAP 2005); Banna v. IRS (In re Banna), 2005 Bankr. LEXIS 3088, \*6 (Bankr. D. Mont. 2005) [citing Security Farms as "clear, unambiguous, and binding precedent"].

Because there is no pending state court action for this court to abstain in favor of, the request for abstention will be denied without prejudice. Nor is there an action pending here for this court to remand to the state court, as Parker requests in her opposition. When Parker filed that opposition, she was apparently unaware that her quiet title action, removed to this court as AP No. 19-9004, had, six days earlier, been dismissed for lack of prosecution by her, as the plaintiff. Thus, there is nothing for the court to remand.<sup>2</sup> Mid Valley argues in its reply the dismissal "operates as an adjudication on the merits for purposes of res judicata." Mid Valley's Reply, filed May 28, 2019, at 3:7-8. Citing Fed. R. Civ. P. 41(b), incorporated herein by Fed. R. Bankr. P. 7041, Mid Valley argues Parker's First and Fourth Claims for Relief in this adversary proceeding should be dismissed based on res judicata. The rule provides that a dismissal for failure to prosecute is an adjudication on the merits, "[u]nless the dismissal order states otherwise." Rule 41(b).

Mid Valley has made only a cursory showing as to the elements of res judicata, and Parker has not had an opportunity to oppose the request. But in any event, the court did not intend its dismissal to be with prejudice or to be an adjudication on the merits. Accordingly, the court will amend its dismissal order in AP No. 19-9004 to so state.

For the reasons stated, the motion will be denied without prejudice and the court will stay this adversary proceeding pending the outcome of Parker's appeal from the Order After Hearing. The court will hear the matter.

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1 "IT IS FURTHER ORDERED THAT BAP Appeal No. EC-19-1099 will proceed as an appeal from: (i) the March 27, 2019, order indicating that a December 2017 foreclosure sale did not violate the automatic stay and that earlier postponements of the foreclosure sale did not violate the automatic stay . . . ." Order Re Scope of Appeals, Denying Stay Pending Appeal, and Requiring Response Regarding Jurisdictional Issues, filed May 1, 2019, in BAP Nos. EC-19-1079 and EC-19-1099, p. 3.

2 This adversary proceeding, AP No. 18-9005, was not removed from the state court; it was commenced here by Parker.

30. [19-90272](#)-D-13 JOHN/TAMARA FERNANDEZ OBJECTION TO CONFIRMATION OF  
[NLL-2](#) PLAN BY U.S. BANK, N.A.  
4-30-19 [[19](#)]

Final ruling:

This is the objection of U.S. Bank to confirmation of the debtors' proposed chapter 13 plan. The hearing has been continued by order dated May 29, 2019 to June 20, 2019 at 9:00 a.m. for an evidentiary hearing. No appearance is necessary on June 11, 2019.

31. [19-90077](#)-D-13 ANGEL MEDRANO MOTION TO CONFIRM PLAN  
[JT-4](#) 5-10-19 [[52](#)]

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) there is no motion on file, as required by Fed. R. Bankr. P. 9014(a) and LBR 3015-1(d) (1) and 9014-1(d) (1); the only document filed besides the plan is a notice of hearing on plan confirmation; (2) the moving party gave only 32 days' notice of the hearing rather than the 35 days' required by LBR 3015-1(d) (1) and applicable rules; (3) the notice of hearing states "you must file your objection in writing . . . before the deadline set forth above," but there is no deadline set forth above or anywhere in the notice, and the notice of hearing does not include the cautionary language required by LBR 9014-1(d) (3) (B) (ii); (4) the moving party failed to serve any of the creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); (5) the moving party failed to serve either of the creditors requesting special notice in this case at their designated addresses, as required by the same rule; (6) the moving party failed to serve any of the three creditors listed on his Schedule E/F who have not filed proofs of claim, as required by Fed. R. Bankr. P. 2002(a) (9) and (g); (7) the proof of service of each document is attached to the document rather than being filed separately, as required by the court's local rules; (8) the proof of service states in the text that the document was served by mail but the addresses of the parties ostensibly served are email addresses and the matrix states that service was by electronic notice; and (9) there is no evidence the plan that is apparently the subject of the confirmation hearing was ever served on anyone.

The debtor has filed two different plans in this case - the original plan, filed February 13, 2019, and an amended plan, filed April 9, 2019. The notice of hearing does not advise creditors, the trustee, or the court which of the two plans is to be considered - the title is merely Notice of Hearing on Plan Confirmation, and the notice itself merely states that a Chapter 13 Plan Confirmation hearing will occur.<sup>1</sup> The court assumes it is the amended plan the debtor seeks to confirm, whereas there is no evidence of service of that plan and the plan was not filed with the notice but a month earlier. This does not comply with LBR 3015-1(d) (1).

On May 21, 2019, apparently in an effort to cure the second defect listed above, the moving party filed another Notice of Hearing on Plan Confirmation, this one stating the hearing would take place on June 25, 2019 and with a copy of the amended plan attached. Filed with the notice was a copy of the PACER matrix but there is no proof of service, either attached or filed separately. The hearing will

not be continued to June 25, 2019; instead, the motion - although, as indicated above, there is really no motion at all - will be denied at this time for the reasons set forth above.

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

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1 The notice states that a true and correct copy of the proposed plan is attached as Exhibit A, but there is no copy attached to the notice filed with the court.

32. [19-90378](#)-D-13 GREGORY THOMPSON MOTION TO VALUE COLLATERAL OF  
[PLG-1](#) BANK OF AMERICA, N.A.  
5-9-19 [[8](#)]

**Final ruling:**

This motion was granted by stipulated order entered on June 6, 2019. As a result this matter is removed from calendar as moot. No appearance is necessary.

33. [19-90179](#)-D-13 ROBERT/ROBIN SMITH MOTION TO CONFIRM PLAN  
[JAD-2](#) 4-23-19 [[25](#)]

34. [17-90087](#)-D-13 KEITH YEAMAN CONTINUED MOTION TO SELL OR  
[BSH-4](#) TRANSFER ASSETS  
3-21-19 [[61](#)]

35. [19-90187](#)-D-13 MARCELLA RICO  
[MJH](#)-1

MOTION TO CONFIRM PLAN  
4-24-19 [[15](#)]

**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 referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

36. [19-90307](#)-D-13 JAY WHITAKER  
[AHN](#)-1

MOTION TO SELL  
5-24-19 [[34](#)]

**Tentative ruling:**

This is the debtor's motion to sell certain real property. The court intends to continue the hearing because the moving party gave only 18 days' notice of the hearing rather than the 21 days' required by Fed. R. Bankr. P. 2002(a)(2).

The court will hear the matter.

37. [18-90908](#)-D-13 HIRAM KEMP  
[DCJ](#)-4

MOTION TO VALUE COLLATERAL OF  
FRANCHISE TAX BOARD  
5-21-19 [[52](#)]

38. [19-90215](#)-D-13 DAWN DURBIN  
[LFT](#)-1

MOTION TO DISMISS CASE  
5-24-19 [[22](#)]