UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 6, 2017 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

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

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

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

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1. 17-23308-D-13 RACHEL SIMS — MOTION FOR RELIEF FROM AUTOMATIC STAY
PEE-1
GATB, LLC VS.
5-19-17 [8]
Final ruling:

This case was dismissed on June 5, 2017. As a result the motion will be denied by minute order as moot. No appearance is necessary.

2. 16-23114-D-13 DAISY TEODOSIO — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1
WELLS FARGO BANK, N.A. VS.
5-24-17 [31]
Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'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 there is no equity in the subject property and the creditor's interest in the subject property is not adequately protected. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

3. 16-26915-D-13 RICKY UGALE — MOTION TO MODIFY PLAN
CJY-1 — 5-24-17 [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 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.

4. 12-29222-D-13 KYLE/TRACY TROCHE — MOTION TO MODIFY PLAN
PGM-3 — 5-22-17 [113]

5. 17-23323-D-13 VICTOR VAZQUEZ — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
RDG-1 — 6-2-17 [32]

6. 15-20127-D-13 RUBEN/ROSALIE GONZALES — MOTION TO MODIFY PLAN
ALF-3 — 5-18-17 [40]

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.

7.	17-21930-D-13 JCK-3	FERGUS/KAREN MCDOUGALL	MOTION TO CONFIRM PLAN 5-26-17 [32]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties failed to serve the party listed on their Schedule G as a party to a three-year office lease with the debtors. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes persons and entities who are parties to executory contracts or unexpired leases with the debtors. The court notes that the debtors also failed to comply with Fed. R. Bankr. P. 1007(a)(1), which requires debtors to include on their master address list all parties included or to be included on their schedules, including Schedule G.

As a result of this service defect, 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.

8.	17-21930-D-13 JCK-4	FERGUS/KAREN MCDOUGALL	MOTION TO VALUE COLLATERAL OF NATIONAL CITY MORTGAGE 5-30-17 [37]

9.	14-28732-D-13 ERG-4	ALFREDO GOMEZ AND MARIA PENA	MOTION TO MODIFY PLAN 5-23-17 [78]

Final ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties served the motion, notice of hearing, declaration, and exhibits (which did not include the plan), but not the plan itself, as required by LBR 3015-1(d)(2); and (2) the proof of service is signed under oath as to the declarant's age and non-party status but not as to the facts of service, as required by 28 U.S.C. 1746. (The declaration states the declarant "certifies" the facts of service but the certification is not made under the penalty of perjury.)

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.

10. 16-27933-D-13 ADANELLY LEWIS — MOTION TO CONFIRM PLAN
ADR-2 — 5-22-17 [40]

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.

11. 17-22537-D-13 RAJ BIRDI — OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT, LLC
NLG-2 — 6-5-17 [28]

12. 17-22537-D-13 RAJ BIRDI — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
RCO-1 — 5-31-17 [20]

13. 17-22537-D-13 RAJ BIRDI — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
RDG-1 — 6-2-17 [25]

14. 17-23238-D-13 JCK-1 — LAURIE CROSBY-WILSON — MOTION TO VALUE COLLATERAL OF FINANCIAL CENTER CREDIT UNION 5-26-17 [8]

15. 17-23238-D-13 JCK-2 — LAURIE CROSBY-WILSON — MOTION TO VALUE COLLATERAL OF PROGRESSIVE LEASING 5-26-17 [13]

Tentative ruling:

This is the debtor's motion to value collateral of Progressive Leasing; namely, unspecified used furniture. The debtor scheduled Progressive Leasing as being owed $1,712 and asserts the replacement value of the furniture is $1,000. The problem is that the motion is not accompanied by evidence demonstrating that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(7). The moving papers do not indicate whether the debt was incurred within the one year prior to the debtor's filing. The debtor also failed to indicate when the debt was incurred where required to do so on her Schedule D. Thus, the debtor has failed to show she is not precluded from valuing the furniture by the terms of the hanging paragraph following § 1325(a)(9). The creditor has not filed a proof of claim from which the court might determine this information.

The court recognizes that, given the relatively insignificant amounts involved, the court might readily speculate the hanging paragraph does not apply here. The court also recognizes that in these circumstances, a debtor and/or her counsel might find the disclosure requirement to be trivial. There is not, however, an exception to the hanging paragraph for used furniture or for debts that are relatively insubstantial in amount, and it should not present too great a difficulty for a debtor to make the required disclosures in the first instance, as a reasonable quid pro quo for eliminating a portion of an otherwise legitimate debt.

For the reasons stated, the debtor has failed to carry her burden of proof and the motion will be denied. In the alternative, the court will continue the hearing to allow the debtor to demonstrate, by admissible evidence, that she is entitled to value the collateral. The court will hear the matter.

16. 17-23238-D-13 JCK-3 — LAURIE CROSBY-WILSON — MOTION TO VALUE COLLATERAL OF S&S AUTO SALES 5-26-17 [18]

Tentative ruling:

This is the debtor's motion to value collateral of S & S Auto Sales; namely, a 2004 BMW X-5. The debtor scheduled S & S as being owed $12,000 and asserts the replacement value of the vehicle is $500. The debtor testifies the vehicle has been wrecked and the cost of repairs would be over $10,000. The problem is that the motion is not accompanied by evidence demonstrating that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(7). The moving papers do not indicate whether the creditor has a purchase money security interest in the vehicle or when the debt was incurred. The debtor also failed to indicate when the debt was incurred where required to do so on her Schedule D. Thus, the debtor has failed to show she is not precluded from valuing the vehicle by the terms of the hanging paragraph following § 1325(a)(9). The creditor has not filed a proof of claim from which the court might determine this information.

The court recognizes that, given the age of the vehicle and the fact it has been wrecked, the court might readily speculate the hanging paragraph does not apply here. The court also recognizes that in these circumstances, a debtor and/or her counsel might find the disclosure requirement to be trivial. There is not, however, an exception to the hanging paragraph for vehicles that are relatively old or vehicles that have been wrecked, and it should not present too great a difficulty for a debtor to make the required disclosures in the first instance, as a reasonable quid pro quo for eliminating a portion of an otherwise legitimate debt.

For the reasons stated, the debtor has failed to carry her burden of proof and the motion will be denied. In the alternative, the court will continue the hearing to allow the debtor to demonstrate, by admissible evidence, that she is entitled to value the collateral. The court will hear the matter.

17. 17-23238-D-13 JCK-4 — LAURIE CROSBY-WILSON — MOTION TO VALUE COLLATERAL OF FINANCIAL CENTER CREDIT UNION 5-26-17 [23]

18. 17-22244-D-13 KRISTEN MILLARD — MOTION TO VALUE COLLATERAL OF FINANCIAL CENTER CREDIT UNION
JTN-1 — 5-25-17 [14]

Final ruling:

This is the debtor's motion to value collateral of Financial Center Credit Union; namely, the debtor's 2014 Kia Optima, and to value another claim of the Credit Union as a general unsecured claim. The motion will be denied for the following reasons. First, the moving party failed to serve the Credit Union in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Credit Union by certified mail, whereas the Credit Union is not an FDIC-insured institution and was required to be served by first-class mail, not certified mail. Compare Fed. R. Bankr. P. 7004(b)(3) and preamble to 7004(b) with Fed. R. Bankr. P. 7004(h).

The portion of the motion in which the moving party seeks to value the claim of the Credit Union "for Loan ending 2141" as a general unsecured claim will be denied for the additional independent reason that the debtor is seeking this relief on a basis other than the value of the collateral for the loan. The motion refers to the loan ending in -2141 as a consolidation loan, or "Loan 1C," and states the debtor has obtained information that the loan is not secured by any collateral. Thus, there is nothing to value. A motion to value collateral is a motion to determine the amount of a creditor's secured claim, as limited by the value of its collateral for that claim. The question whether a claim is secured or unsecured to begin with is not appropriately determined on a motion to value; it must be determined by way of an adversary proceeding. Fed. R. Bankr. P. 7001(2).

This is not to suggest the debtor must file such a proceeding in this case. To the extent the debtor and the creditor agree on the issue, there is no dispute for the court to resolve, by way of adversary proceeding or otherwise. The Credit Union has filed two proofs of claim in this case – one for a claim secured by the debtor's 2014 Kia Optima, Claim No. 4, and the other for an unsecured loan, Claim No. 5. On a properly-noticed subsequent motion to value the secured claim, the court would be valuing the claim represented by Claim No. 4. As Claim No. 5 does not purport to be secured, there is apparently no need for the debtor to seek a determination of the status of that claim as secured or unsecured.

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

19. 17-22244-D-13 KRISTEN MILLARD — MOTION TO VALUE COLLATERAL OF FINANCIAL CENTER CREDIT UNION
JTN-2 — 5-25-17 [19]

Final ruling:

This is the debtor's motion to value collateral of Financial Center Credit Union; namely, the debtor's 2014 Kia Optima, and to value another claim of the Credit Union as a general unsecured claim. The motion will be denied for the following reasons. First, there is no evidence the moving party served the motion at all. The moving party filed a proof of service with the motion; however, it refers to DC No. JTN-1, a motion that is on this calendar separately. In other words, there are two proofs of service of DC No. JTN-1 and no proof of service of DC

No. JTN-2. Second, if the proof of service was incorrect, and if DC No. JTN-2 was in fact served, the moving party failed to serve the Credit Union in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Credit Union by certified mail, whereas the Credit Union is not an FDIC-insured institution and was required to be served by first-class mail, not certified mail. Compare Fed. R. Bankr. P. 7004(b)(3) and preamble to 7004(b) with Fed. R. Bankr. P. 7004(h).

As to the portion of the motion in which the moving party seeks to value the Credit Union's claim secured by the debtor's 2014 Kia Optima, the motion will be denied as duplicative of the relief sought in DC JTN-1. The portion of the motion in which the moving party seeks to value the claim of the Credit Union "for Loan ending 6905" as a general unsecured claim will be denied for the additional independent reason that the debtor is seeking this relief on a basis other than the value of the collateral for the loan. The motion refers to the loan ending in -6905 as a personal loan, or "Signature Loan 3," and states the debtor has obtained information that the loan is unsecured. Thus, there is no collateral to value. A motion to value collateral is a motion to determine the amount of a creditor's secured claim, as limited by the value of its collateral for that claim. The question whether a claim is secured or unsecured to begin with is not appropriately determined on a motion to value; it must be determined by way of an adversary proceeding. Fed. R. Bankr. P. 7001(2).

This is not to suggest the debtor must file such a proceeding in this case. To the extent the debtor and the creditor agree on the issue, there is no dispute for the court to resolve, by way of adversary proceeding or otherwise. The Credit Union has filed two proofs of claim in this case – one for a claim secured by the debtor's 2014 Kia Optima, Claim No. 4, and the other for an unsecured loan, Claim No. 5. On a properly-noticed subsequent motion to value the secured claim, the court would be valuing the claim represented by Claim No. 4. As Claim No. 5 does not purport to be secured, there is apparently no need for the debtor to seek a determination of the status of that claim as secured or unsecured.

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

20.	17-22850-D-13 RWF-1	BLANCA AMADOR	MOTION TO VALUE COLLATERAL OF LENDMARK FINANCIAL SERVICES, LLC 5-30-17 [13]

Final ruling:

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

21. 17-22850-D-13 BLANCA AMADOR
RWF-2

MOTION TO VALUE COLLATERAL OF FINANCIAL CENTER CREDIT UNION
5-30-17 [17]

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.

22. 17-22251-D-13 BRIAN GEGARIAN
RDG-3

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-26-17 [26]

Final ruling:

This is the trustee's objection to the debtor's claims of exemption. On June 6, 2017, the debtor filed an amended Schedule C. 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.

23. 17-22558-D-13 KATHY FEENEY
RDG-1

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
6-5-17 [19]

Final ruling:

This case was dismissed on June 20, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

24. 15-25264-D-13 MARTIN/MARTHA REGALADO
PGM-1

MOTION TO MODIFY PLAN
5-24-17 [26]

25. 16-23770-D-13 ERIK/SYLVIA PATTEN — MOTION TO MODIFY PLAN
DEF-3 — 5-16-17 [58]

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.

26. 16-26671-D-13 JOHN/HASINA HELMANDI — OBJECTION TO CLAIM OF RICHARD G. HYPPA, CLAIM NUMBER 4
RM-5 — 5-17-17 [132]

Tentative ruling:

This is the debtors' objection to the claim of Richard Hyppa, Claim No. 4 on the court's claims register. Mr. Hyppa has filed opposition.[1] For the following reasons, the court intends to continue the hearing periodically pending the outcome of Mr. Hyppa's state court appeal.

This is the debtors' second objection to Mr. Hyppa's claim. In their first, DC No. RM-4, they argued that the state court's order vacating Mr. Hyppa's renewal of his state court judgment against debtor John Helmandi was a final judgment to be given res judicata effect in this court, and thus, Mr. Hyppa's claim should be disallowed. This court disagreed, holding that Mr. Hyppa's time to appeal from the state court order vacating the renewal of the judgment had not run by the time the debtors' bankruptcy and the automatic stay intervened. This court granted relief from stay to permit Mr. Hyppa to file a notice of appeal.

Mr. Hyppa filed a timely notice of appeal and the debtors have renewed their objection to his claim, stating:

> **The Debtors are filing an amended plan which calls for deposit of funds sufficient to pay the disputed claim over the course of the 60-month plan if the state court appeal should reverse the order of the El Dorado County Court. If the order is affirmed on appeal, however, then the funds deposited to pay off that claim should be returned to debtors as the claim would fail because the claimant would no longer hold a valid debt owed by the debtors as of the filing of the bankruptcy. This objection is filed so as [to] preserve the debtors' objection to this claim and preserve their right to seek its disallowance.**

Debtors' Obj., DN 132, at 4:32-5:8. The objection is premature in the sense that the validity of Mr. Hyppa's claim cannot be determined until his appeal from the order vacating the renewal of his judgment has been determined. In the meantime, however, the debtors have a legitimate reason for concern.

LBR 3007-1(d)(1) provides:

Prior to the expiration of the deadline to object to proofs of claim applicable in chapter 13 cases, set in Subpart (d)(3) below, the trustee shall pay a claim as specified in the confirmed chapter 13 plan unless the trustee is served with an objection to such claim that is set for hearing within sixty (60) days of its service. Until the objection is adjudicated or settled, the trustee shall cease paying dividends on account of the claim.

The deadline to object to proofs of claim in this case will not run for roughly eight months after the debtors obtain confirmation of a plan. See LBR 3007-1(d)(2) and (3). During that eight-month period, pursuant to Subpart (d)(1) of the rule, absent a pending claim objection, the trustee would be making payments on Mr. Hyppa's disputed claim. It is logical a debtor would be concerned about payments being made on a claim where the state court has vacated the creditor's renewal of his judgment and where the only thing that appears to stand between allowance and disallowance of the claim is the creditor's appeal from the order vacating the renewal. The simplest way to resolve this dilemma is for the court to continue the hearing on this objection pending the outcome of the state court appeal. The court proposes to continue the hearing at three-month intervals, but will consider longer intervals if requested by the parties.

The court will hear the matter.

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1 Apparently because Mr. Hyppa represents other creditors in this case, as well as himself, he has filed his opposition as "Attorney for Creditors [the other creditors] and In Pro Per as Claimant." However, it appears the objection and opposition are both directed solely to Mr. Hyppa's own claim and not to any claims of the other creditors he represents.

27. 16-26671-D-13 JOHN/HASINA HELMANDI — MOTION TO CONFIRM PLAN
RM-6 — 5-17-17 [129]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties failed to serve the party listed on their Schedule D as their car lender; thus, the failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b); and (b) the moving parties failed to serve the Franchise Tax Board at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b).

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

28.	17-23282-D-7 PEE-1 VENETIAN BRIDGES STOCKTON, LLC VS.	LISA CRAWFORD	MOTION FOR RELIEF FROM AUTOMATIC STAY 5-19-17 [9]

Tentative ruling:

The certificate of service filed in support of this motion is both unsigned and undated. As a result, unless an amended certificate of service correcting these deficiencies is filed prior to the hearing date, this motion will be denied.

29.	17-22589-D-13 RDG-1	JEFFREY/ERIN MILLER	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 6-5-17 [21]

30.	17-22590-D-13 RDG-1	STEPHANIE AIROLA-SANTIAGO	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 6-5-17 [13]

31.	15-25135-D-13 JCK-3	RODERICK/BERNADETTE VIRAY	MOTION TO SELL 6-19-17 [53]

32. 17-23837-D-13 FRANCISCO/MARIA PADILLA MOTION TO EXTEND AUTOMATIC STAY
PGM-1 6-13-17 [12]

Tentative ruling:

This is the debtors' motion to extend the automatic stay pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The motion is supported by a declaration of the debtors' attorney, who purports to authenticate a declaration of the debtors filed as an exhibit. He states, "While my clients do have the limited ability to speak the English language, the written communication is limited as evidenced by the true and correct copy of Debtors Declaration" filed as an exhibit. P. Macaluso Decl., DN 14, at 1:22-25. He also testifies that "[i]n order to insure the accuracy of the schedules and budgets," he sat down with the debtors and "explain[ed] each page, translating both the words and their meanings" (id. at 1:28-2:3); that in the debtors' last case, "there was some oven equipment that broke, the employees were pushing for higher hourly labor, and so [the debtors] failed to pay the S.B.E. which snowballed before they realized it" (id. at 2:4-7); and that at present, "the Debtors' cash til is being attached daily, which does not allow for the orderly disbursement to all creditors." Id. at 2:8-10. Finally, the debtors' attorney appeals to the court's sympathy, stating the debtors "are senior citizens that have operated the restaurant for many years and [it] is their life's blood." Id. at 2:11-12.

The declaration filed as an exhibit appears to be signed by the debtors, but it is filed as an exhibit not as a declaration. Hence, it is hearsay and the debtor's counsel offers no basis for a conclusion it is admissible. Aside from the hearsay aspect of the declaration, the declaration is not sufficient. It includes boilerplate paragraphs from § 1325(a), a boilerplate paragraph stating, "We have hired a new attorney, Peter Macaluso, and are confident of his ability to represent us and propose a solid Chapter 13 Plan that will allow us to pay our creditors to the best of our ability" (Debtors' Ex. A, ¶ 13), and paragraphs with blank lines in which the clients are to write about why their last case failed, why they believe the present case will succeed, and what assets they want to keep under the protection of the automatic stay. In fact, the debtors have not hired a new attorney: Mr. Macaluso represented them during the three years their last case was pending. Thus, it appears clear Mr. Macaluso did not read and translate the declaration to the debtors, as he testifies he did with the schedules and budget, because surely he or they would have caught this error in the declaration.

The paragraphs the debtors were to fill in with the reasons their prior case failed and reasons the present case will succeed are filled in by hand, first in English and then in Spanish. The English handwriting is very difficult to read and, in any event, is crossed out (by hand). The court cannot be certain the English writing represented an accurate translation of the Spanish or even whether it was intended to. The court can determine, however, that both refer generally to the cost of food going up and sales going down, to some extra costs, to increases in employees' hourly rates and reductions in their hours, and to the debtors increasing menu prices and getting new banquet clients. It is clear there is no reference, in either the English or the Spanish, to the State Board of Equalization or the payment of sales taxes. This is of significant concern given the debtors' history in this court.

The debtors' attorney states the debtors have operated their restaurant for many years; according to the debtors' Schedule I, it has been 23 years. The debtors

ran into trouble early on, filing the first of the six chapter 13 cases they have filed in this court on December 23, 1997. Of the 19 and a half years since then, they have been in one or another of the six chapter 13 cases for 17 years.[1] They began this saga owing, according to the State Board of Equalization's claim filed in the first case, $100,047 in sales taxes. The first case was dismissed on the Board's motion for failure to pay $11,317 in post-petition sales taxes. The second, third, and fourth cases were dismissed for failure to make plan payments. The fifth and most recent case before this one was dismissed on the Board's motion for failure to pay sales taxes between February 1, 2014 and September 30, 2016 (that is, post-petition sales taxes) totaling $85,707 (including interest and penalties) as of February 15, 2017.

The Board has not yet filed a proof of claim in this case; however, in the most recent prior case, it filed a claim for $248,634 priority. According to the trustee's final report in that case, the Board was paid $116,829 through the plan, leaving a balance due of $131,805 on the pre-petition claim. However, those payments through the plan were apparently made at the expense of accruing post-petition sales taxes the debtors were not paying. Considering that the debtors incurred $85,707 in liability after the petition was filed in the last case, it appears the debtors owe at least $217,512, the amount they scheduled.

As indicated above, the debtors' declaration does not mention sales taxes or the State Board of Equalization at all. The debtors' attorney attempts to gloss over the sales tax issue in his own declaration, stating (based on hearsay) that with repairs to oven equipment and employees pushing for higher wages, the debtors "failed to pay the S.B.E. which snowballed before they realized it." That testimony appears to be disingenuous as it is belied by the testimony of the Board's Business Taxes Compliance Specialist, in support of the Board's motion to dismiss the most recent prior case, that his letters of March 27, 2016 and August 19, 2016 to the debtors and their counsel and his letter of October 26, 2016 to the trustee, with copies to the debtors and their counsel, had gone unanswered. The Board waited until March 1, 2017 before filing its motion to dismiss; that is, for almost a year after the tax compliance specialist sent his first letter. It seems clear the debtors were aware for at least a year they were not paying their post-petition sales taxes; thus, it is difficult for the court to believe the taxes snowballed before they realized it. In support of the present motion, the debtors have failed to address the issue at all in their own declaration, which in any event, is hearsay.

For the reasons stated, the court concludes the debtors have failed to overcome by clear and convincing evidence the presumption that their present case was not filed in good faith, and the motion will be denied. The court will hear the matter.

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1 Deducting the time between the dismissal (not the closing) of one case and the filing of the next case.

33. 16-26469-D-13 LONEY/MARY TURPIN — MOTION TO SELL
TAG-8 — 6-21-17 [122]

Final ruling:

This is the debtors' motion for an order approving the sale of real property. The motion will be denied because there is no proof of service on file. Any proof of service filed now would not be timely under LBR 9014-1(e)(3). In addition, as the motion was filed on June 21, 2017, it appears that less than 21 days' notice was given contrary to FRBP 2002(a). AS a result of these defects, the motion will be denied by minute order. No appearance is necessary.

34. 15-27287-D-13 GINA TOSCANO — CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
PGM-4 — 2-8-17 [62]

Tentative ruling:

This is the debtor's objection to the Notice of Mortgage Payment Change filed by JPMorgan Chase Bank (the "Bank") on January 4, 2017. The Bank filed opposition and the hearing was continued three times pursuant to stipulations of the parties. In the meantime, the debtor filed a modified plan that provided for an ongoing mortgage payment in the amount of $1,432.41, just $2.47 short of the $1,434.88 set forth in the January 4, 2017 Notice as the new mortgage payment. The trustee filed opposition to the debtor's motion to confirm the modified plan, and in reply, the debtor conceded the mortgage payment should be $1,434.88, the same as set forth in the January 4, 2017 Notice, and also conceded the trustee's position as to the amount of the post-petition arrears due the Bank. Thus, it appears the debtor concedes the accuracy of the January 4, 2017 Notice and the court intends to overrule this objection.

The court will hear the matter.