

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Modesto, California

August 5, 2014 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.	<a href="#">14-90700</a> -D-13	COREY HUGHES	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 6-27-14 [ <a href="#">30</a> ]
	RDG-2		

Final ruling:

This case was dismissed on July 17, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

2.	<a href="#">14-90800</a> -D-13	JORGE/ROCIO VIDES	MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE 6-30-14 [ <a href="#">13</a> ]
	CJY-1		

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.

3.     [14-90702](#)-D-13     LORENZO OJEDA AND IRMA     OBJECTION TO CONFIRMATION OF  
RDG-2                   MEDINA                             PLAN BY RUSSELL D. GREER  
6-27-14 [[41](#)]
  
4.     [14-90702](#)-D-13     LORENZO OJEDA AND IRMA     OBJECTION TO CONFIRMATION OF  
SSA-2                   MEDINA                             PLAN BY ARTHUR SANCHEZ AND  
7-2-14 [[46](#)]
  
5.     [13-90204](#)-D-13     LEONARDO/JESUSA             MOTION TO MODIFY PLAN  
CJY-5                   MANGROBANG                       7-1-14 [[99](#)]
  
6.     [14-90904](#)-D-13     ART/TERESA SISNEROZ         MOTION TO VALUE COLLATERAL OF  
CJY-1   GM FINANCIAL  
7-8-14 [[9](#)]

**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.

7. [14-90904](#)-D-13 ART/TERESA SISNEROZ MOTION TO AVOID LIEN OF LOBEL  
CJY-2 FINANCIAL CORP.  
7-8-14 [[14](#)]

**Final ruling:**

This is the debtors' motion to avoid a judicial lien held by Lobel Financial Corp. ("Lobel"). 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 debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving parties are to submit an appropriate order, which shall, however, make clear that the lien is avoided only as to the real property of the debtors and not as to real property, if any, of the additional judgment debtor named in Lobel's abstract of judgment. No appearance is necessary.

8. [14-90805](#)-D-13 JOSE/ERIKA CERVANTES MOTION TO VALUE COLLATERAL OF  
JAD-1 REAL TIME RESOLUTIONS  
6-12-14 [[11](#)]

**Final ruling:**

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

9. [14-90706](#)-D-13 DAVID/MARIA DRUMOND MOTION TO CONFIRM PLAN  
TOG-4 6-13-14 [[18](#)]

**Final ruling:**

This is the debtors' motion to confirm a chapter 13 plan. The motion will be denied for the following reasons. First, the debtors failed to serve the Franchise Tax Board at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b). Second, the moving parties failed to serve several of the creditors listed on their Schedule F at all, as required by Fed. R. Bankr. P. 2002(b). (At the time the debtors filed their schedules, about one month into the case, they failed to file an amended master address list to add the creditors listed on their Schedule F that had not been listed on their master address list. Thus, when they utilized the PACER matrix for service of this motion, the matrix did not include those creditors.) Finally, the plan provides for the secured claim of Bank of America at \$0, whereas the debtors have failed to obtain an order valuing the collateral securing that claim, as required by LBR 3015-(j).

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

10. [14-90707](#)-D-13 THOMAS JEFFRIES OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY TRUSTEE RUSSELL D.  
GREER  
7-7-14 [[18](#)]

**Final ruling:**

This case was dismissed on July 17, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

11. [14-90412](#)-D-13 GREGORY/LINDA GRIJALVA MOTION TO VALUE COLLATERAL OF  
RLF-1 NATIONSTAR MORTGAGE, LLC  
6-30-14 [[22](#)]

**Final ruling:**

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

12. [11-91613](#)-D-13 GUSTAVO/BERNARDINA SOSA MOTION TO VALUE COLLATERAL OF  
JDP-1 WELLS FARGO BANK, N.A.  
6-19-14 [[49](#)]

**Final ruling:**

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

13. [14-90414](#)-D-13 TONYA ANTHONY MOTION TO VALUE COLLATERAL OF  
DEF-2 CENTRAL STATE CREDIT UNION  
6-19-14 [[23](#)]

**Final ruling:**

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Central State Credit Union at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Central State Credit Union's secured claim at \$0.00

by minute order. No further relief will be afforded. No appearance is necessary.

14. [11-94222](#)-D-13      SHELLEY SHAHEN      MOTION TO MODIFY PLAN  
DCJ-3      6-24-14 [[66](#)]
  
15. [14-90727](#)-D-13      FRADON/TITANIA TOMA      OBJECTION TO CONFIRMATION OF  
RDG-1      PLAN BY RUSSELL D. GREER  
7-11-14 [[23](#)]
  
16. [08-92731](#)-D-13      RAYMOND/BERTHA GARCIA      OBJECTION TO CLAIM OF PADRINO  
DCJ-3      LOPEZ, CLAIM NUMBER 20  
6-24-14 [[82](#)]
  
17. [13-91931](#)-D-13      JERROD/GINA MELLO      MOTION TO VALUE COLLATERAL OF  
SSA-3      WESTAMERICA BANK  
7-2-14 [[38](#)]

Final ruling:

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

18. [13-91931](#)-D-13 JERROD/GINA MELLO  
SSA-4

MOTION TO AVOID LIEN OF  
WESTAMERICA BANK  
7-2-14 [[43](#)]

Tentative ruling:

This is the debtors' motion to avoid a judicial lien held by Westamerica Bank (the "Bank"). The motion will be denied because the moving parties have failed to demonstrate they are entitled to the relief requested. Specifically, the moving parties have failed to demonstrate that the Bank holds a judicial lien that is subject to avoidance. "There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992).

The debtors claim the Bank has a lien on their real property in Newman, California by virtue of an abstract of judgment recorded in the Merced County Recorder's Office. By contrast, Newman is in Stanislaus County, California. Under California law, the recording of an abstract of judgment with the county recorder of a particular county creates a judicial lien on real property of the judgment debtor in that county (Cal. Code Civ. Proc. §§ 697.310(a), 697.340(a)), whereas the debtors have submitted no evidence they own real property in Merced County, where the abstract of judgment was recorded, or that the Bank also recorded an abstract of judgment in Stanislaus County, where the debtors own real property. Thus, there is no evidence there is a lien here that is subject to avoidance.<sup>1</sup>

The court will hear the matter.

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<sup>1</sup> The Bank's abstract of judgment names several judgment debtors in addition to debtor Jerrod Mello. In the event the debtors file a further motion to avoid the

judgment lien, and if the motion is granted, the order thereon should make clear that the lien is being avoided only as to the interest of Jerrod Mello in real property, and not as to the interest of any other judgment debtor. Further, the debtors' exhibits also include a Notice of Judgment Lien filed by the Bank with the California Secretary of State. The order on any subsequent motion to avoid the judgment lien as against the debtors' real property should make clear that the lien is not being avoided as to any personal property, either of debtor Jerrod Mello or of any other judgment debtor.

19. [11-90732](#)-D-13 CARLOS/RUBY TAGRE  
MLP-4

MOTION TO MODIFY PLAN  
6-19-14 [[46](#)]

**Tentative ruling:**

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

The trustee opposes the motion on the ground that the debtors are contributing a total of \$717 per month to their 401(k) plans, contributions the trustee believes are not reasonable or necessary in any amount. The court notes that the debtors have enjoyed increases in both their incomes, by a total of \$1,245 per month over the amounts they were making at the commencement of the case. Offsetting those increases, the debtors have recently borrowed against Ms. Tagre's 401(k) plan to purchase a replacement vehicle for a 2002 Chevrolet Trailblazer they described as being in fair condition with at least 135,000 miles, which they sold to Ms. Tagre's father. The debtors are repaying the new 401(k) loan at \$500 per month. In addition, the debtors have not only continued contributing to their 401(k) plans, but have increased their contributions. These changes, together with increases in the debtors' other living expenses, have resulted in a proposed reduction in their plan payment and a proposed reduction in the dividend to general unsecured creditors from 22% to 15%.

The court has approved the debtors' sale of the Trailblazer and their incurring of new debt for the purchase of the replacement vehicle. However, the result of that new debt, together with the debtors' contributions of \$717 per month to their 401(k) plans, would result in the debtors enjoying virtually all the benefit of the significant increases in their incomes, while proposing to share no portion of that benefit with their creditors, and in fact, resulting in a decrease in the dividend to creditors. In their reply to the trustee's opposition, the debtors claim they have cancelled all voluntary retirement deductions, but are not sure what their resulting net pay will be. Further, they claim, debtor Carlos Tagre will now be responsible for a portion of his medical insurance premiums. Thus, when the trustee objected to the debtors using one method to retain all the benefit of their significantly increased income for themselves, the debtors apparently discovered another way to offset the increase.

In addition, the debtors contend that, even though they have cancelled their retirement deductions, they should be allowed to continue with their original deductions because their original plan was confirmed despite those deductions. The



debtors were above-median income debtors when this case was commenced, and their income has since increased substantially since then. However, rather than share any portion of the increases with their creditors, they elected to attempt to retain all the benefit for themselves, first, by purchasing a 2013 Honda to replace a 2002 Chevrolet Trailblazer the debtors simply decided was too gas-inefficient and unreliable, as it had over 135,000 miles on it and needed new tires. The cost of that purchase, which is being paid at the expense of the debtors' creditors, was \$500 per month. On top of that, the debtors attempted to offset the rest of their increased income by tripling their voluntary 401(k) contributions. When debtors conduct themselves in this fashion, they lose their credibility with the court, and it becomes difficult, if not impossible, to determine what the true reality is. In short, in this case, the trustee contends the voluntary contributions are not reasonable or necessary in any amount, and the debtors have failed to rebut that conclusion.

In these circumstances, the court concludes that the debtors have failed to meet their burden of demonstrating that the plan has been proposed in good faith. Accordingly, the motion will be denied. The court will hear the matter.

20. [14-90938](#)-D-13      CLIFFORD PIKE AND LAURENE      MOTION TO VALUE COLLATERAL OF  
JDP-1                      FLOHR-PIKE                      USAA FEDERAL SAVINGS BANK  
7-8-14 [[8](#)]

21. [14-90740](#)-D-13      ALEJANDRO MORALES              MOTION TO VALUE COLLATERAL OF  
JAD-1    WILMINGTON FINANCIAL, LLC  
6-23-14 [[27](#)]

**Final ruling:**

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

22. [13-91543](#)-D-13 SEAN AMIN CONTINUED MOTION TO VALUE  
DCJ-4 COLLATERAL OF U.S. SMALL  
BUSINESS ADMINISTRATION  
3-25-14 [[56](#)]
23. [13-91543](#)-D-13 SEAN AMIN CONTINUED MOTION TO CONFIRM  
DCJ-5 PLAN  
5-19-14 [[71](#)]
24. [13-91543](#)-D-13 SEAN AMIN CONTINUED MOTION TO SELL  
DCJ-6 6-10-14 [[80](#)]
25. [12-92046](#)-D-13 GILBERTO HERNANDEZ AND MOTION TO APPROVE LOAN  
CJY-2 GUADALUPE LEPE MODIFICATION  
7-8-14 [[45](#)]

**Final ruling:**

This is the debtors' motion to confirm a chapter 13 plan. The motion will be denied for the following reasons. First, the moving parties filed the same motion twice, once on June 4, 2014 and once of June 5, 2014, with no change except for the hearing date and time, but without indicating what changes were being made. This forced the court to review the two motions side-by-side to determine what changes had been made, a task that should have been unnecessary. Second, the notice of hearing purports to quote from LBR 9014-1(f)(1), but the following allegedly quoted material is not from the local rule.<sup>1</sup> This improperly gives the impression that the material is contained in the court's local rule. Third, the notice of hearing does not contain the admonition required by LBR 9014-1(d)(3). Fourth, the moving parties originally set the motion for hearing at an incorrect date and time, July 22, 2014 at 3:00 p.m., and when notified by the clerk's office, they filed a second notice of hearing (although not marked "Amended"), in which the date and time were given in the caption as August 5, 2014 at 10:00 a.m., but in the text as July 22, 2014 at 3:00 p.m. Fifth, because the second-filed motion and notice of hearing bore the same titles as the first-filed set, the court cannot determine from the proofs of service which versions were served. Sixth, the motion states in the first sentence that the debtors move for an order confirming their plan filed on or about January 23, 2014, whereas this case was not filed until March 28, 2014. As a result of these service and notice 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.

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1 The notice of hearing states:

NOTICE IS FURTHER GIVEN that, this motion is made pursuant to Local Bankruptcy Rule 9014-1(f), which states:

1. Debtor's motion is based upon this Notice of Hearing, Declaration of Debtors, and upon such other evidence, authority, and oral arguments that may be presented at the hearing. Contact your attorney; your rights may be affected. You should read these papers carefully.

Notice of Hearing, filed June 4, 2014, at 1:28-2:5.

27. [14-90650](#)-D-13 JORGE ELIZALDE  
TOG-4

MOTION TO CONFIRM PLAN  
6-11-14 [[29](#)]

**Final ruling:**

This is the debtor's motion to confirm a chapter 13 plan. The motion will be denied because the debtor failed to serve Luis Gutierrez, lessee of the debtor's used car lot, listed on the debtor's Schedule G, as required by Fed. R. Bankr. P. 2002(b) and 1007(a)(1). (The debtor's motion to confirm a plan in a prior case was denied for this same reason.) The rules do not permit a debtor to pick and choose which creditors to list on the master address list or which creditors to serve with motions to confirm a plan. Instead, they require all creditors to be listed on the master address list (Fed. R. Bankr. P. 1007(b)) and all creditors to be served with motions to confirm plans. Fed. R. Bankr. P. 2002(b).

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

28. [14-90851](#)-D-13 PAUL/DELORESS VIEIRA  
JDP-1

MOTION TO VALUE COLLATERAL OF  
BEST BUY CO., INC.  
7-8-14 [[12](#)]

**Final ruling:**

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

29. [14-90851](#)-D-13 PAUL/DELORESS VIEIRA  
JDP-2

MOTION TO VALUE COLLATERAL OF  
SANTANDER CONSUMER USA  
7-8-14 [[16](#)]

**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.

30. [14-90654](#)-D-13 ANGEL/TABATHA GARCIA OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
6-27-14 [[28](#)]

31. [14-90654](#)-D-13 ANGEL/TABATHA GARCIA OBJECTION TO CONFIRMATION OF  
SW 1 PLAN BY WELLS FARGO BANK, N.A.  
6-4-14 [[21](#)]

**Final ruling:**

This objection has been withdrawn by the moving party pursuant to a stipulation with the debtors which has been approved by the court. The matter will be removed from calendar.

32. [14-90657](#)-D-13 KATRINA CHANDLER OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
6-27-14 [[18](#)]

33. [14-90657](#)-D-13 KATRINA CHANDLER OBJECTION TO DEBTOR'S CLAIM OF  
RDG-2 EXEMPTIONS  
6-27-14 [[15](#)]

**Final ruling:**

This is the trustee's objection to the debtor's claim of exemptions. On July 2, 2014, the debtor 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.

34. [09-92158](#)-D-13 RENE MACIAS AND ROSE MOTION TO VALUE COLLATERAL OF  
JDP-1 FLORES-MACIAS HSBC FINANCE CORP.  
6-30-14 [[74](#)]

**Final ruling:**

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

35. [09-92158](#)-D-13 RENE MACIAS AND ROSE MOTION TO VALUE COLLATERAL OF  
JDP-2 FLORES-MACIAS HSBC FINANCE CORP.  
6-30-14 [[78](#)]

**Final ruling:**

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

36. [14-90760](#)-D-13 SCOTT/MICHELLE HORTON MOTION TO VALUE COLLATERAL OF  
CJY-1 GROCERS CAPITAL COMPANY  
6-23-14 [[15](#)]

**Final ruling:**

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

37. [14-90861](#)-D-13 BRIAN/KIMARY NELSON MOTION TO VALUE COLLATERAL OF  
JDP-1 BANK OF THE WEST  
7-8-14 [[13](#)]

**Final ruling:**

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

38. [13-91466](#)-D-13 DAVID PONCINO CONTINUED MOTION TO MODIFY PLAN  
TAW-1 5-10-14 [[23](#)]

39. [12-92669](#)-D-13 KEVIN/DENISE HARDER  
JCK-3

MOTION TO MODIFY PLAN  
6-26-14 [[58](#)]

**Tentative ruling:**

This is the debtors' motion to confirm a modified chapter 13 plan. Wells Fargo Bank, holder of the first deed of trust on the debtors' residence, opposes the motion, claiming the debtors are delinquent in their post-petition payments for the months of April through June 2014, plus a suspense account charge, for a total of \$4,355.58. The debtors, citing the trustee's disbursements log, claim the Bank has received \$4,458 for that time period. The problem is that the disbursements log plainly shows that the debtors have missed four mortgage payments between the time the case was filed and July 2014. Thus, while they should have made 21 payments during that time period, November 2012 through July 2014, they have actually made only 17. Thus, they have not made the payments due for April through July 2014, as the Bank contends.

The Bank, on the other hand, refers to the remaining 27 months of the plan term, whereas the plan is a 60-month plan, meaning there are 39 months remaining, beginning August 2014. Thus, the Bank's conclusion about the amount that must be paid monthly to cure the post-petition arrears does not appear to be accurate.

The court intends to continue the hearing to allow the parties to resolve the issues of the amount of the post-petition mortgage delinquency and the amount that must be paid monthly in order to cure it. The court will hear the matter.

40. [10-92172](#)-D-13 RICKY/CONNIE CHURCH  
[14-9017](#)  
CHURCH ET AL V. ASHLOCK ET AL

MOTION TO SET ASIDE DEFAULT  
JUDGMENT  
6-16-14 [[25](#)]

**Final ruling:**

The court finds that a hearing will not be helpful and is not necessary. This is the motion of defendant Bob Reeve (the "defendant") to set aside his default, which was entered on June 3, 2014. The plaintiffs have not filed opposition. For the following reasons, the motion will be granted.

Pursuant to Fed. R. Civ. P. 55(c), incorporated herein by Fed. R. Bankr. P. 7055, the court may set aside the defendant's default for good cause shown. The



factors the court is to consider are (1) whether the defendant engaged in culpable conduct that led to the default; (2) whether the defendant had a meritorious defense; or (3) whether setting aside the default would prejudice the plaintiff. Franchise Holding II, LLC v. Huntington Rests. Group, Inc., 375 F.3d 922, 925-26 (9th Cir. 2004). These factors are in the disjunctive; the court may deny a motion to set aside a default if any of the three factors is shown (id. at 926); however, the court is not required to do so. Brandt v. Am. Bankers Ins. Co., 653 F.3d 1108, 1112 (9th Cir. 2011). The defendant bears the burden of demonstrating that at least one of these factors favors setting aside the default. Franchise Holding II, 375 F.3d at 926.

In this case, all three factors favor setting aside the default. First, there is no indication the defendant's failure to timely respond to the complaint was intentional or the result of bad faith.<sup>1</sup> The defendant testifies the plaintiff's summons and complaint were in his mail in late May of this year when he returned to his office after an extended period of time out of the area, and that he did not have anyone checking his mail in his absence. He then prepared a motion to dismiss the complaint, which he filed on June 4, 2014, the day after his default was entered. There is no indication of the requisite sort of culpability here, and the plaintiffs have filed nothing suggesting culpability.

Second, the defendant has a potentially meritorious defense to the complaint. This court has recently conditionally granted its own motion to dismiss the complaint for failure to state a claim upon which relief can be granted, and has given the plaintiffs time to file an amended complaint. In light of the court's conclusions about the insufficiency of the original complaint, it would be inequitable to deny the defendant's motion to set aside the default.<sup>2</sup>

Finally, the plaintiffs have filed no opposition to this motion; thus, they have not asserted that they would be prejudiced in any way by the setting aside of the default, and no prejudice is indicated by the record.<sup>3</sup>

For the reasons stated, the court concludes that the three factors the court is to consider all weigh in favor of setting aside the defendant's default, and the motion will be granted. The motion will be granted by minute order. No appearance is necessary.

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1 "[T]o treat a failure to answer as culpable, the movant must have acted with bad faith, such as an intention to take advantage of the opposing party, interfere with judicial decision making, or otherwise manipulate the legal process." United States v. Signed Personal Check No. 730, 615 F.3d 1085, 1092 (9th Cir. 2010) (citations omitted, internal quotations omitted).

2 "[J]udgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits." Id. at 1091 (citations omitted, internal quotations omitted).

3 "To be prejudicial, the setting aside of a judgment must result in greater harm than simply delaying resolution of the case. Rather, the standard is whether [plaintiff's] ability to pursue his claim will be hindered." TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691, 701 (9th Cir. 2001) (citation omitted, internal quotations omitted).

41. [14-90572](#)-D-13 DOUGLAS/DEBORAH TOBIN MOTION TO VALUE COLLATERAL OF  
PGM-1 BANK OF AMERICA, N.A./ REAL  
TIME RESOLUTIONS  
6-23-14 [[19](#)]

**Final ruling:**

This is the debtors' motion to value collateral of Bank of America (the "Bank"). The motion will be denied because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank by certified mail to the attention of an officer, but failed to also serve the attorneys who had earlier filed a request for special notice on behalf of the Bank, as required by Fed. R. Bankr. P. 7004(h), subd. (1). (For future reference, counsel should note that service on an attorney for an FDIC-insured institution, under the rule just cited, must be by first-class mail.)

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

42. [14-90476](#)-D-13 MIGUEL/LETICIA HERNANDEZ MOTION TO VALUE COLLATERAL OF  
SDM-2 WELLS FARGO BANK, N.A.  
7-3-14 [[41](#)]

**Final ruling:**

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

43. [14-90380](#)-D-13 DENNIS/CHRISTA MEYERS MOTION TO CONFIRM PLAN  
DVD-2 6-18-14 [[36](#)]

**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.

44. [14-90681](#)-D-13 SARAH TUCKER OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
6-27-14 [[17](#)]

45. [14-90683](#)-D-13 JOSE/LYNN VERA MOTION TO CONFIRM PLAN  
TOG-4 6-12-14 [[22](#)]

**Final ruling:**

This is the debtors' motion to confirm a chapter 13 plan. The motion will be denied because the moving parties failed to serve several of the creditors listed on their original and amended Schedules F. Thus, the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b).

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

46. [12-90686](#)-D-13 PAUL/LYDIA POWELL MOTION TO MODIFY PLAN  
JLK-2 6-9-14 [[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 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.

47. [14-90686](#)-D-13 NOBLE/NANETTE BARLOW MOTION TO VALUE COLLATERAL OF  
JDP-1 SECURED FUNDING CORP.  
6-19-14 [[14](#)]

**Final ruling:**

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

48. [14-90686](#)-D-13 NOBLE/NANETTE BARLOW MOTION TO VALUE COLLATERAL OF  
JDP-2 GE CAPITAL BANK  
6-19-14 [[18](#)]

**Final ruling:**

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

49. [12-90894](#)-D-13 MIKE/VICTORIA COTTA  
YG-4

MOTION TO MODIFY PLAN  
6-17-14 [[74](#)]

50. [13-91995](#)-D-13 MIGUEL/GLORIA VARGAS  
TOG-4

MOTION TO CONFIRM PLAN  
6-18-14 [[57](#)]

**Final ruling:**

The court finds that a hearing will not be helpful and is not necessary. This is the debtors' motion to confirm a second amended chapter 13 plan. By order dated May 6, 2014, the court denied confirmation of a first amended plan that was identical to the second amended plan now proposed. The trustee had opposed the motion to confirm the first amended plan on several different grounds, and the debtors had filed a response. In the response, the debtors relied on amended documents they had filed on March 18, 2014, including amended Schedules A through J and an amended Statement of Financial Affairs. The court issued a final ruling denying the motion on the ground that none of the amended documents was signed by the debtors, as required by Fed. R. Bankr. P. 1008. The court added that, as a result, those documents would be considered stricken from the record, and would be of no effect in this case. As a result, the trustee's objection to exemptions, which had earlier been sustained, would stand, the plan failed the liquidation test, and the motion was denied.

With this motion, the debtors again rely on the amended documents filed March 18, 2014. "Our petition was inadvertently filed under the Nevada District. We amended the schedules and petition to comply with the Eastern District on March 13, 2014." Motion to Confirm Second Amended Plan, filed June 18, 2014, at 1:23-24. (Nothing was filed in this case on March 13, 2014; the court believes the debtors were referring to the amended schedules filed March 18, 2014.) However, the debtors have not filed amended schedules (or any other amended documents) that bear their signatures. Because the amended schedules and other documents filed March 18, 2014 were invalid for lack of verification by the debtors, as required by Fed. R. Bankr. P. 1008, because those schedules have been deemed by the court to be of no effect in the case, and because the debtors' second amended plan depends on the accuracy of those schedules, the court concludes that the plan, like the first amended plan, fails the liquidation test, and the motion will be denied by minute order. No appearance is necessary.

51. [14-90696](#)-D-13 JAVIER MORENO

OBJECTION TO CONFIRMATION OF

52. [14-90696](#)-D-13 JAVIER MORENO OBJECTION TO DEBTOR'S CLAIM OF  
RDG-2 EXEMPTIONS  
6-27-14 [[30](#)]

**Final ruling:**

This is the trustee's objection to the debtor's claim of exemptions. On July 1, 2014, the debtor 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.

53. [14-90896](#)-D-13 ANTONIO LEPE MOTION TO VALUE COLLATERAL OF  
SJS-1 FARMERS AND MERCHANTS BANK  
6-30-14 [[10](#)]

**Final ruling:**

This is the debtor's motion to value collateral of Farmers & Merchants Bank (the "Bank"). The motion will be denied because the moving party failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Bank (1) by first-class mail to the attention of its registered agent for service of process at a street address in Lodi, California (but with a typo in the street number); and (2) by certified mail to the attention of a named CEO at an address in Granite Quarry, North Carolina. The first method was insufficient because service on an FDIC-insured institution such as the Bank must be by certified mail. Fed. R. Bankr. P. 7004(h).

The second method was insufficient because the address used is that of a different institution entirely from the Farmers & Merchants Bank in Lodi, California. The FDIC's website lists dozens of different active institutions bearing the name Farmers & Merchants Bank or having those words in their names, in many different states. For some reason, despite the fact that the address listed by the debtor on his Schedule D is the address of the Loan Service Center of Farmers & Merchants Bank of Central California, in Lodi, California, the moving party or his attorney chose to attempt to serve the Bank at the address of Farmers & Merchants Bank of Granite Quarry, North Carolina. He might with as much effect have chosen the Farmers & Merchants Bank of Timberville, Virginia or the one in Tomah, Wisconsin. They are all different institutions - service on one does not equate to

service on a different one. Thus, the only service of this motion by certified mail was to an institution that apparently has nothing whatever to do with this case or the debtors.

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

54. [13-92199](#)-E-7      MARK THOMPSON      OBJECTION TO DEBTOR'S CLAIM OF  
RDG-2      EXEMPTIONS  
6-13-14 [[42](#)]

**Final ruling:**

This case was converted to a case under Chapter 7 on July 17, 2014 and was transferred to Department E of this court. As a result the objection to claim of exemptions will be continued to August 21, 2014 at 10:30 a.m. to be heard by the Hon. Ronald H. Sargis. No appearance is necessary.

55. [13-90204](#)-D-13      LEONARDO/JESUSA      CONTINUED MOTION TO SELL  
CJY-4      MANGROBANG      6-13-14 [[89](#)]

56. [14-90730](#)-D-13      STUART KURLAND      OBJECTION TO CONFIRMATION OF  
PLAN BY VFC PARTNERS 10 LLC AND  
MOTION TO DISMISS CASE

7-16-14 [[20](#)]

57. [14-90536](#)-D-13 RICHARD/WILBERTA BLESSING CONTINUED OBJECTION TO  
RDG-1 CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
5-30-14 [[24](#)]
58. [13-92154](#)-D-13 ENRIQUE/ROSA MORAN MOTION TO SELL  
MLP-2 7-22-14 [[25](#)]
59. [10-90088](#)-D-13 KENNETH/JANICE MURCHISON MOTION TO VALUE COLLATERAL OF  
CJY-4 CIT BANK D.B.A. THE CIT  
GROUP/CONSUMER FINANCE INC.  
7-15-14 [[146](#)]
60. [12-91592](#)-D-13 SCOTT/MARIA TILLERY MOTION TO INCUR DEBT  
CJY-6 7-18-14 [[74](#)]



61. [10-91997](#)-D-13 RICHARD/LORI MEEKER  
JDP-1

MOTION TO VALUE COLLATERAL OF  
J.P. MORGAN CHASE BANK, N.A.  
7-15-14 [[59](#)]