UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

September 3, 2013 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. 12-33104-D-13 WILLIAM/LIA MCVICKER — MOTION TO MODIFY PLAN
BSH-6 — 7-17-13 [90]

Tentative ruling:

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

The debtors' present confirmed plan was confirmed just four months before they filed this motion. The order confirming that plan requires a 100% dividend to general unsecured creditors. The debtors now seek to reduce the dividend to 74.51% based on an apparent reduction in their income from oil and gas royalties and leases ("royalty income"). The motion states that in the six months prior to the filing of this case, the debtors' royalty income averaged $7,620 per month, whereas in the 12 months since the filing, it has averaged $6,157.

The trustee objected that, whereas the motion asserts a decrease in the royalty income, by $1,463 per month ($7,620 – $6,157), the debtors' two most recent amended Schedules I actually show an increase in that income, from $5,635 to $6,285 per

month, an increase of $650 per month.[1] The trustee stated that because of this discrepancy, he was unable to conclude that the reported changes in income were accurate or that the modified plan had been proposed in good faith. The debtors replied that they had stipulated to a 100% dividend in order to resolve the trustee's objection to their plan, although they did not amend their Schedule I at that time, and now, their royalty income has decreased. In other words, although the debtors stipulated to the higher plan payment required to yield a 100% dividend, their decision to do that has not been supported by their royalty income, which has been lower in the past 12 months than it had been previously.

The plan payment the debtors stipulated to, $4,023, is indeed significantly higher than the monthly net income shown by their amended Schedules I and J filed most recently before the time they agreed to that payment – the ones filed February 4, 2013, DN 76, in which the debtors estimated their royalty income at $5,500 per month. It is also quite a bit higher than the monthly net income the schedules would have shown had the debtors amended their Schedule I in accordance with debtor William McVicker's declaration, filed March 5, 2013, in which he estimated their royalty income would average $6,900 per month. The bottom line is that the $4,023 plan payment the debtors stipulated to is apparently not supported by their actual royalty income averaged over the last 12 months. On that basis, the debtors now seek to reduce their plan payment from $4,023 to $3,161 per month.

However, despite the reduction in their royalty income, the court is unable to conclude that the plan has been proposed in good faith. First, the debtors were able to make actual plan payments of $4,263 per month in April, May, and June of 2013,[2] despite the fact that their actual royalty income in those three months averaged only $5,750 per month, even less than the $6,157 on which they are basing their proposed new plan payment, $3,161. Second, the debtors have failed to decrease any of their expenses in response to their reduced income, despite the fact that earlier in this case, they increased certain of their expenses significantly, apparently in response to the trustee's discovery that they had dramatically overstated other expenses. For example, in response to the trustee's objection to the deduction on their original Form 22C of $3,151 as payroll and social security taxes, the debtors amended the form, reducing those taxes to just $1,500, explaining only that the latter figure "more accurately reflects [their] tax liability."[3] The trustee also objected to the debtors' business expenses as listed on their original Schedule J, $3,776, on the ground that the debtors had indicated at the meeting of creditors they had no operating expenses from their oil and gas leases. In response, the debtors amended their Schedule J, reducing their business expenses to $2,430, then amended it again, reducing those expenses to only $236 – a huge drop from the original figure. Some of the expenses originally shown as business expenses were moved to personal expenses (alarm service, pest control, memberships and dues, newspapers and subscriptions); another large portion, $912 for depreciation, was removed after the trustee objected that it was a non-cash expense not appropriate for deduction on a debtor's Schedule J.

This reduction in the debtors' business expenses, absent other changes, would have resulted in significantly more funds (as much as several thousand dollars per month) being available for unsecured creditors. Rather than allowing that to happen, however, the debtors filed an amended Schedule J – after the trustee raised the objections described above – on which they increased their home maintenance expenses by $403 per month (from $150 to $553), increased their transportation expenses by $784 per month (from $750 to $1,534), and added $185 for support of dependents not living in their home. The debtors submitted detailed evidence in support of the increases in their home maintenance and transportation expenses,

which included equipment and vehicle repair and upgrade costs the debtors cannot possibly expect to continue to incur on an ongoing basis.[4] The court cannot conclude that the debtors included those extraordinary repair and upgrade costs on their amended Schedule J in good faith, or that their failure to reduce those costs in the face of reduced income has been proposed in good faith.

In addition, the debtors continue to spend $168 per month for a motorcycle loan, despite the trustee's earlier objection and although they have four other vehicles, all of which are 2003 models or newer. (Debtor Lia McVicker is still working; however, debtor William McVicker is retired, and they have no dependents.) They justify this expense on the ground that debtor Lia McVicker uses the motorcycle for her commute in nice weather, which saves on gas, but they have not shown there is a significant savings over, for example, their 2010 Nissan Altima or the 2004 Honda Civic Hybrid on which they spent $8,190 in repair costs in 2012. Finally, the debtors have added eight different categories to those included on the official form Schedule J – haircuts, gifts, and personal care; pet expenses; alarm system; post office box rental; pest control; safe deposit box rental; memberships and dues; and newspapers and subscriptions – on which they claim to spend a total of $724 per month, for a household of two.

In short, regardless of the fact that their royalty income has dropped, the debtors propose to reduce their plan payment without adjusting any of their expenses discussed above, which expenses, in the court's view, do not represent a reasonable balance between the debtors' interests and those of their creditors. In these circumstances, the court is unable to conclude that the plan has been proposed in good faith.

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

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1 The debtors correctly point out in their reply that these figures were actually $5,500 and $6,150, respectively, not $5,635 and $6,285. The increase, however, was as the trustee reports, $650 per month.

2 The debtors' proposed modified plan calls for plan payments of $4,263 per month in months 9 – 11, or April, May, and June 2013. The court therefore concludes that the debtors actually made those payments.

3 Declaration of Debtor(s), filed January 17, 2013, at 7:15-16.

4 The debtors filed a list of their home maintenance costs incurred in 2012, all of which they included in calculating the monthly average of $553. The list included a replacement dishwasher ($484), greenhouse supplies ($328), a pool pump ($165), septic tank pumping ($650), animal drinking troughs ($204), HVAC repair ($314 + $600), awnings ($750), alarm service repair ($426), and a large number of miscellaneous "hardware parts," plants, pool supplies, and other items.

Under transportation costs, the debtors included $8,190 in repairs to their Honda and $5,718 in repairs to their Chevy, all in 2012. The total listed on their amended Schedule J, $1,534 per month, includes the following costs averaged out to a monthly basis: a transmission ($3,935), tires ($350), tires for another vehicle ($1,382), an IMA battery assembly and transmission control module ($3,548), a dashboard gauge monitor/portable PC ($1,414), an update to the same ($546), and an electronic brake system ($1,276). The debtors have presented no evidence – indeed, they have not suggested – that any of these expenses will need to be duplicated

during the life of their plan.

2. 10-46307-D-13 DAVID ELDRIDGE
NLG-1
NATIONSTAR MORTGAGE, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-5-13 [61]

Final ruling:

In the debtor's confirmed plan this creditor is scheduled as Class 4 - to be paid outside the plan. Therefore, the motion is unnecessary as the plan explicitly provides: "Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of its loan or security documentation provided this case is pending under chapter 13." The court will deny the motion as unnecessary by minute order. No appearance is necessary.

3. 08-31814-D-13 JAMES/MARCELLA HANSON
JDP-1

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
7-29-13 [71]

Final ruling:

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

4. 13-24718-D-13 STEPHANIE JOHNSON
BSH-1

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
7-15-13 [34]

Final ruling:

This is the debtor's motion to value personal property of the debtor securing certain claims of the Internal Revenue Service. In particular, the debtor asks the court to value the property securing the most senior of six tax claims at $83,873, and the rest of the tax claims at $0. The court's records indicate that no timely

opposition has been filed and the relief requested in the motion, with the caveat set forth below, 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 claims in the amounts set forth in the declaration supporting the motion. Moving party is to submit an order which provides that the creditor's secured claims are in the amounts set forth in the declaration. No further relief is being afforded. No appearance is necessary.

The debtor and counsel should note that the motion and supporting declaration reflect a misunderstanding as to the type of relief that is properly granted on a motion, as opposed to by way of an adversary proceeding, and the type of relief this court grants in ruling on a motion to value collateral. Specifically, the motion states that "[t]he liens will be stripped only if the debtor's plan is actually confirmed" (Motion to Value Collateral – Personal Property, filed July 15, 2013, at 2:7), and that "[t]he liens will be reinstated if the debtor fails to obtain discharge." Id. at 2:11. The court will not avoid a lien based on a lack of value in the creditor's collateral until after a debtor has completed a chapter 13 plan and received a chapter 13 discharge. In other words, the liens are not "stripped" when the plan is confirmed and then "reinstated" if the debtor does not complete the plan; instead, the liens are subject to being "stripped" only after the plan has been completed and the discharge entered.

5.	13-24718-D-13 BSH-4	STEPHANIE JOHNSON	MOTION TO VALUE COLLATERAL OF DEPARTMENT OF REVENUE - STATE OF MISSISSIPPI 7-15-13 [38]

Final ruling:

This is the debtor's motion to value collateral securing certain tax claims of the Mississippi Department of Revenue ("Mississippi") at $0. Mississippi's claims are secured by tax liens on the debtor's personal property assets, and the amount owed on a senior tax lien in favor of the Internal Revenue Service exceeds the value of the assets. No timely opposition has been filed and the relief requested in the motion, with the caveat set forth below, 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 claims at $0. Moving party is to submit an appropriate order. No further relief is being afforded. No appearance is necessary.

The debtor and counsel should note that the motion and supporting declaration reflect a misunderstanding as to the type of relief that is properly granted on a motion, as opposed to by way of an adversary proceeding, and the type of relief this court grants in ruling on a motion to value collateral. Specifically, the motion states that "[t]he liens will be stripped only if the debtor's plan is actually confirmed" (Motion to Value Collateral – Personal Property, filed July 15, 2013, at 2:7), and that "[t]he liens will be reinstated if the debtor fails to obtain discharge." Id. at 2:11. The court will not avoid a lien based on a lack of value in the creditor's collateral until after a debtor has completed a chapter 13 plan

and received a chapter 13 discharge. In other words, the liens are not "stripped" when the plan is confirmed and then "reinstated" if the debtor does not complete the plan; instead, the liens are subject to being "stripped" only after the plan has been completed and the discharge entered.

6. 13-24718-D-13 BSH-5 — STEPHANIE JOHNSON — MOTION TO CONFIRM PLAN 7-17-13 [42]

7. 09-34721-D-13 JDP-1 — OSCAR/BEVERLY BURROLA — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 7-30-13 [41]

Final ruling:

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

8. 13-27621-D-13 MLA-2 — CLAUDIA JOB — MOTION TO CONFIRM PLAN 7-15-13 [27]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

9. 11-26422-D-13 ALB-2 — KEVIN/IDA GRIMES — MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK 8-7-13 [33]

10. 12-32628-D-13 PGM-3 — EUGENIO/TERESITA REYES — MOTION TO ALLOW AN INFORMAL PROOF OF CLAIM FOR PNC MORTGAGE 7-30-13 [58]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtors' motion "to allow an informal proof of claim" – a secured claim – for PNC Mortgage. The motion will be denied for the following reasons. First, with a single exception, the moving parties failed to serve the creditors who have filed proofs of claim in this case, all of whom are unsecured creditors; that is, whose claims would be affected by the outcome of the motion. Second, the moving parties failed to serve the party requesting special notice at DN 8 (also an unsecured creditor). Third, the moving party failed to serve the chapter 13 trustee in this case, instead serving a different chapter 13 trustee in this district.

The motion will be denied for the additional independent reasons that (1) there is no informal proof of claim on file to which a late claim on behalf of PNC Mortgage might relate back; and (2) the legal authority concerning the allowance of late-filed claims in chapter 13 cases does not support the allowance of a late claim for PNC Mortgage. The claims bar date in this case for all creditors except governmental units was November 20, 2012. On that day, the law firm of Pite Duncan, LLP, filed a proof of claim on behalf of Champion Mortgage Company on account of its claim secured by a deed of trust on the debtors' property in Antioch, California. At no time has Pite Duncan or anyone else filed a proof of claim on behalf of PNC Mortgage, which holds a deed of trust on the debtors' property in Lodi, California.

On January 14, 2013, the trustee's office served a Notice of Filed Claims on the debtors and their attorney, advising them of the deadline for the debtors to file claims on behalf of creditors, pursuant to LBR 3004-1. That deadline was March 15, 2013. The debtors did not file a proof of claim on behalf of PNC Mortgage. The debtors acknowledge in their motion that the Notice of Filed Claims was reviewed by their counsel's staff, and that no proof of claim was filed on behalf of PNC Mortgage.

The motion ostensibly seeks the allowance of an informal proof of claim, and the debtors cite a case setting forth the informal proof of claim doctrine, In re Anderson-Walker Industries, Inc., 798 F.2d 1285, 1287 (9th Cir. 1986). The essence

of the doctrine is that a late-filed formal proof of claim may relate back to the date of an earlier document if the earlier document could be said to be an "informal claim" because it provided notice of the nature and amount of the claim and stated an intent to hold the debtor liable. Pac. Res. Credit Union v. Fish (In re Fish), 456 B.R. 413, 417 (9th Cir. BAP 2011), citing In re Holm, 931 F.2d 620, 622 (9th Cir. 1991). The problem here is that the debtors have not identified any document they contend constitutes a timely-filed amendable informal proof of claim.

The closest they come is this: "the debtor has filed documents in this case which supports the documents which constitutes an 'informal proof of claim.'" Points & Authorities, filed July 30, 2013, at 5:10-12. They refer to a "previous proof of claim, filed by PNC Mortgage, LLP (exhibit #C)" (id. at 5:13-14), but they have filed no exhibits. The court believes the debtors are referring to PNC's proofs of claim filed in the debtors' two prior cases, which the debtors alluded to earlier in their points and authorities. However, they offer no authority for the proposition that a proof of claim filed in one case, since dismissed, can operate as an informal proof of claim in a later case.

The debtors' remaining arguments are that (1) PNC may not have received actual notice of this case in time to file a proof of claim; (2) PNC acted in good faith and the debtors have not been prejudiced; (3) the claim was provided for in the debtors' plan; and (4) good cause exists for allowing the claim so as to protect the debtors' property. None of these is sufficient. As to the notice issue, the court notes that PNC was served through Pite Duncan, who filed proofs of claim on behalf of PNC in the two prior cases, and at a separate address, which the debtors have not suggested was an incorrect address for PNC. Further, all of these arguments fail because under applicable rules, the court lacks discretion to allow the late-filed claim. Pursuant to Fed. R. Bankr. P. 9006(b)(3), the court may enlarge the time for taking action under Fed. R. Bankr. P. 3002(c) (time for filing proofs of claim in chapter 7, 12, and 13 cases) only to the extent and under the conditions stated in that rule. Rule 3002(c), in turn, provides for the allowance of late-filed claims in a variety of circumstances, none of which is present here.

Instead, in the circumstances presented here, the court lacks discretion to enlarge the time for filing claims. Gardenhire v. United States Internal Revenue Service (In re Gardenhire), 209 F.3d 1145, 1148 (9th Cir. 2000) ("a bankruptcy court lacks equitable discretion to enlarge the time to file proofs of claim; rather, it may only enlarge the filing time pursuant to the exceptions set forth in the Bankruptcy Code and Rules"); Coastal Alaska Lines, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.), 920 F.2d 1428, 1432-33 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists"); In re Johnson, 262 B.R. 831, 845 (Bankr. D. Idaho 2001) ("Given the unambiguous language of Rule 9006(b)(3) and controlling case law, this Court concludes it is simply not permitted to equitably enlarge the time period for filing proofs of claim absent facts which place Creditors within one of the express exceptions of Rule 3002."). Even if excusable neglect were shown, and it has not been, the court would lack discretion to allow the claim, because excusable neglect is not a basis for allowing a late-filed claim. Dicker v. Dye (In re Edelman), 237 B.R. 146, 153 (9th Cir. BAP 1999) ["excusable neglect . . . does not apply to Rule 3002(c)."].

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

11. 13-29733-D-13 CLH-1 — ALAN BERNER — MOTION TO VALUE COLLATERAL OF UNCLE CREDIT UNION 8-6-13 [9]

12. 11-48040-D-13 CJY-3 — MANUEL/IRENE ALVAREZ — MOTION TO MODIFY PLAN 7-23-13 [50]

Final ruling:

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

13. 12-27441-D-13 CJY-1 — ANTHONY/NICHOLE KRONENBERGER — MOTION TO MODIFY PLAN 7-24-13 [26]

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.

14. 13-27642-D-13 PGM-1 — NANCY CLAUS — MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A. 7-25-13 [15]

Tentative ruling:

This is the debtor’s motion to value the collateral securing the claim of

JPMorgan Chase Bank (the "Bank") -- a junior deed of trust against the debtor's residence -- at $0. The Bank has filed opposition, and the debtor has filed a reply. For the following reasons, the motion will be denied.

The debtor alleges that the value of the property in question is $325,000 and that there is a senior deed of trust on which $375,000 is owing, leaving no value to secure the Bank's deed of trust. The Bank has filed opposition requesting that the court continue the hearing for approximately 45 days so it can obtain an appraisal. The Bank states that its counsel contacted the debtor's counsel seeking a continuance, but "the parties were unable to agree to continuing the Motion." Opposition, filed August 20, 2013, at 3:8-9. The debtor states in her reply that the Bank's request for a continuance should not be granted. She contends the Bank failed to comply with the court's local rule requiring that opposition to a motion be accompanied by evidence establishing its factual allegations (see LBR 9014-1(f)(1)(B)); she concludes that because the Bank submitted no evidence, the motion should be granted.

The debtor's reply overlooks the fact that she did not follow the applicable local rule when she filed the motion. As with an opposition, the rule requires that a motion be accompanied by evidence establishing its factual allegations and demonstrating that the moving party is entitled to the relief requested. LBR 9014-1(d)(6). The debtor's motion was supported by her declaration which, however, contained only inadmissible evidence as to the value of the property.

According to the debtor's declaration filed with the motion, she determined the value of the property based solely on her review of Zillow.com, her review of local comparable sales, and her consultation with a realtor and/or broker. This testimony constitutes not the debtor's "personal, lay opinion," as she contends (Reply, filed Aug. 27, 2013, at 1:25-26), but inadmissible hearsay testimony (the debtor's review of Zillow.com and consultation with a realtor or broker) and testimony in the nature of facts of a type generally relied on by experts in the field of real property appraisal (the debtor's review of comparable sales) as to which the debtor has not shown she has any qualifications. See 2 Russell, Bankruptcy Evidence Manual § 701:2, pp. 784-85 (West 2012-2013 ed.). Thus, there is nothing in the debtor's declaration filed with the motion which constitutes admissible evidence of the value of the property.

As if in recognition of the inadequacy of her original declaration, the debtor has filed with her reply an "amended declaration," stating "I determined the value of my property based on my residing in the home and it is my primary residence." Amended Declaration, filed Aug. 26, 2013, at 2:3-4. The filing of this declaration only after the Bank filed its opposition was not in compliance with LBR 9014-1(d)(6), and the court will not consider it.

Because the moving party has the burden of proof on a motion to value collateral, and because the moving party here failed to satisfy that burden of proof when she filed the motion, the Bank was under no obligation under the local rules to submit evidence of its own. However, even if the debtor had submitted admissible evidence, the court would have been inclined to grant the Bank's request for a continuance, recognizing the Bank timely filed opposition, and that a debtor controls the amount of time he or she has to obtain an appraisal by controlling the timing of the motion to value, whereas the creditor has no similar luxury.

Finally, the debtor makes much of the fact that the Bank requested an evidentiary hearing in its opposition, without complying with the local rule

requiring the filing of a separate statement of disputed material factual issues. See LBR 9014-1(f)(1)(B). However, the Bank's request was in the alternative – it requested a continuance or an evidentiary hearing. As the Bank did not file the required separate statement, the court will not set an evidentiary hearing.

The court will hear the matter.

15. 11-40344-D-13 DEBORAH LIMAS — MOTION TO MODIFY PLAN
WW-5 — 7-29-13 [90]

16. 13-28045-D-13 DENISE REES — OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
MDE-1 — 7-31-13 [22]

Final ruling:

This case was dismissed on August 22, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

17. 13-30346-D-13 JUAN/ALMA VAZQUEZ — MOTION TO EXTEND AUTOMATIC STAY
PGM-1 — 8-8-13 [8]

18. 13-22159-D-13 JGL-7 — LARRY COLVIN — MOTION TO CONFIRM PLAN 7-15-13 [60]

Final ruling:

This case was dismissed on July 16, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

19. 13-26459-D-13 PGM-2 — MICHAEL CARLETON — MOTION TO CONFIRM PLAN 7-10-13 [44]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the plan provides for the secured claim of JPMorgan Chase Bank at $0, whereas the court has determined on the debtor's motion to value the collateral securing that claim (DC No. PGM-1) that the value of the property exceeds the amount due on the lien senior to the Bank's lien. Thus, because the property is the debtor's residence, the claim cannot be modified. 11 U.S.C. § 1322(b)(2). The motion will be denied by minute order. No appearance is necessary.

20. 13-22160-D-13 JGL-4 — JULIE JOYCE — MOTION TO VALUE COLLATERAL OF JEFFERSON CAPITAL SYSTEMS, LLC 8-1-13 [77]

Final ruling:

This is the debtor's motion to value collateral of Jefferson Capital Systems, LLC ("Jefferson"). The motion will be denied for the following reasons. First, the moving party utilized a docket control number, JGL-4, that the moving party has previously used for another motion in this case, contrary to LBR 9014-1(c)(3). Second, the motion uses DC No. JGL-4 whereas the notice of motion and declaration use DC No. JGL-2 and the proof of service uses DC No. JGL-3, contrary to LBR 9014-1(c)(4) [all related papers filed with a particular motion must include the same docket control number].

Second, although the motion names Jefferson as the target of the motion in the first paragraph, the prayer names Association Lien Services, and the notice of motion names Target National Bank.

Finally, the moving party failed to serve Jefferson in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Jefferson (1) to the attention of a named "Dir. of Bankruptcy"; and (2)

to the attention of an agent for service of process of Jefferson, but at an address that is not the address of Jefferson's registered agent for service of process. The first method was insufficient because service on a corporation, partnership, or other unincorporated association must be addressed to the attention of an officer, managing or general agent, or agent for service of process. There is no provision in the rule for service on a "director of bankruptcy." The second method was insufficient because if service is to be made to the attention of an agent for service of process, it must be an agent authorized by appointment or by law to receive service (Rule 7004(b)(3)), whereas here, the moving party served The Prentice-Hall Corporation System, Inc., which is the agent for service of process of Corporation Service Company, which in turn, is the agent for service of process of Jefferson. In other words, the moving party did not serve Jefferson's agent for service of process; the moving party served the agent for service of process of Jefferson's agent for service of process.

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

21. 13-22160-D-13 JULIE JOYCE — MOTION TO CONFIRM PLAN
JGL-7 — 7-18-13 [71]

22. 13-27064-D-13 MILDRED GARCIA — MOTION TO CONFIRM PLAN
SJS-1 — 7-15-13 [26]

Final ruling:

Motion withdrawn by moving party on August 23, 2013. Matter removed from calendar.

23. 13-24666-D-13 ROBERT PINTOR — MOTION TO CONFIRM PLAN
JM-2 — 7-22-13 [39]

24. 13-29367-D-13 JCK-1 — WILLIAM/JENI FLORES — AMENDED MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK 8-5-13 [18]

Final ruling:

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

25. 13-29273-D-13 TOG-1 — ERNESTO/MARIA ORTEGA — MOTION TO VALUE COLLATERAL OF SPECIALIZED LOAN SERVICING, LLC 7-30-13 [8]

Final ruling:

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

26. 10-51974-D-13 PLG-3 — STEPHEN MCBURNEY AND MICHELE ZELAYA — MOTION TO MODIFY PLAN 7-10-13 [57]

27. 13-29574-D-13 TOG-1 — MARIA CAZARES — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 7-24-13 [8]

Final ruling:

The matter is resolved without oral argument. This is the debtor's 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 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 Wells Fargo Bank, N.A.'s secured claim at $0.00 by minute order. No further relief will be afforded. No appearance is necessary.

28. 13-29976-D-13 TOG-1 — RAMON BARRAGAN — MOTION TO VALUE COLLATERAL OF OCWEN LOAN SERVICING, LLC 8-2-13 [9]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of OCWEN Loan Servicing, 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 OCWEN Loan Servicing, LLC's secured claim at $0.00 by minute order. No further relief will be afforded. No appearance is necessary.

29. 11-25979-D-13 ALFONSO PEREZ MOTION TO MODIFY PLAN
BAS-2 7-18-13 [54]

30. 12-30480-D-13 MARY BUCHLER MOTION TO SUBSTITUTE PARTY
RAC-3 7-30-13 [41]

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 to substitute party is supported by the record. As such the court will grant the motion to substitute party. Moving party is to submit an appropriate order. No appearance is necessary.

31. 13-27384-D-13 JOSEPHINE ARENAS-FIERRO MOTION TO CONFIRM PLAN
RCP-1 8-2-13 [18]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party served a notice of hearing and an amended notice of hearing, neither of which provided 28 days' notice of the time fixed for filing objections, as required by Fed. R. Bankr. P. 2002(b), and taken together, the notices gave only 39 days' notice of the hearing rather than 42 days', as required by LBR 3015-1(d)(1) and applicable rules; (2) the moving party failed to serve several creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); (3) the moving party failed to serve the IRS at its address on the Roster of Public Agencies, as required by LBR 2002-1; (4) the moving party failed to serve Gilbert G. Fierro, listed on her Schedule H, at all, as required by Fed. R. Bankr. P. 2002(b); and (5) the moving party failed to serve Crest Financial, listed on her Schedule D, at all, as required by the same rule.

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

32. 09-32886-D-13 JASON/ALICIA VOELKEL — MOTION TO MODIFY PLAN
CJY-6 — 7-30-13 [83]

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.

33. 12-41787-D-13 EDDIE/DIANN MANNIE — MOTION TO MODIFY PLAN
JCK-1 — 7-31-13 [25]

Final ruling:

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

34. 10-51090-D-13 MIGUEL/MARISOL OROZCO — MOTION FOR ENTRY OF DEFAULT JUDGMENT
13-2095 — LDB-1 — 7-25-13 [26]
OROZCO ET AL V. BANK OF AMERICA, N.A.

Tentative ruling:

This is the motion of the plaintiffs, who are the debtors in the chapter 13 case in which this adversary proceeding was filed (the "debtors"), for entry of a default judgment against defendant Bank of America (the "Bank"). The Bank has not filed opposition. The plaintiffs' complaint was properly served on the Bank, which has not filed an answer or other response, and the time to do so has now expired. The Bank's default has been entered. For the following reasons, the motion will be granted in part.

In their complaint in this proceeding, the debtors alleged that (1) the Bank held a deed of trust securing a home equity line of credit on real property previously owned by the debtors; (2) the property was foreclosed on by the holder of a senior deed of trust, Chase Home Finance ("Chase"); (3) the debtors did not list their debt to the Bank on account of the home equity loan (or their debt to Chase) on their schedules in the chapter 13 case because they had lost the property to foreclosure; (4) the Bank was notified of the chapter 13 case on account of three accounts other than the home equity loan; and thus, (5) the Bank had notice of the chapter 13 case in time to file a proof of claim, but "has not filed Proofs of Claim in this case for any of their scheduled claims." Debtors' Complaint, filed March 21, 2013 ("Complaint"), at 3:15-16.[1] Thus, the debtors conclude, "all debts, including any remaining unsecured debt owed on the Home Equity Loan, should be discharged upon Debtors receiving a discharge in this case." Id. at 4:16-17.

The complaint sets forth three causes of action, one of which is viable. The first cause of action, which is not viable, is based on an anti-deficiency statute, Cal. Code Civ. Proc. § 580b. The problem with the debtors' theory is that Chase's foreclosure sale left the Bank in the position of a "sold-out junior," and the Bank's lien was not a purchase money lien. (Chase's deed of trust was recorded in 2004; the Bank's was recorded several months later, in 2005.) Thus, the anti-deficiency statute does not apply to the Bank's debt. Roseleaf Corp. v. Chierighino, 59 Cal. 2d 35, 41 (1963). The debtors' third cause of action seeks alternative relief – if the court declines to determine that the Bank's debts are dischargeable in their chapter 13 case, the debtors request that the court extend the time for the Bank to file a proof of claim, and the debtors would then either object to the claim or seek to amend their plan to provide for it. This relief is not necessary, and in any event, is not available here, where the court would have no discretion to extend the time for filing a proof of claim. See Gardenhire v. United States Internal Revenue Service (In re Gardenhire), 209 F.3d 1145, 1148 (9th Cir. 2000).

The debtors' second cause of action seeks a determination that the Bank had notice of the chapter 13 case in time to file a proof of claim, and thus, that "all debts, including any remaining unsecured debt owed on the Home Equity Loan, should be discharged upon Debtors receiving a discharge in this case." Compl. at 4:16-17. This aspect of the relief requested in the complaint is valid, and the motion will be granted and default judgment entered on that basis, but not on the bases set forth in the first and third causes of action. As an aside, the debtors' statement that the Bank has not filed a proof of claim for any of its claims, while technically correct, appears to overlook the fact that two proofs of claim, Claim Nos. 1 and 9 on the court's claims register, were filed by alleged successors in interest of the Bank on account of two of the credit card accounts listed on the debtors' schedules under the Bank's name. These successors in interest were not named in the complaint in this adversary proceeding, and nothing in the default judgment may be construed to apply to the claims or interest of those successors.

For the reasons stated, the motion will be granted in part, and default judgment will be entered on the second cause of action of the debtors' complaint. Specifically, the court will enter a judgment determining that any pre-petition obligations of the debtors to the Bank, including (as specifically requested by the debtors) any debt arising from the home equity loan and deed of trust, are dischargeable and will be discharged at the time the debtors receive a discharge.

The court will hear the matter.

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1 The complaint also refers to an earlier chapter 13 case filed by the debtors in which they did list both Chase and the Bank on their Schedule D because they believed at that time that they still had an ownership interest in the property. These allegations are not relevant to this motion.

35.	13-29990-D-13 TOG-1	JOSE/JOSEFINA VAZQUEZ	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 8-1-13 [8]

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.

36.	11-37393-D-13 JCK-2	ARNEL DELINILA AND MONINA SUMILONG-DELINILA	MOTION TO MODIFY PLAN 7-31-13 [32]

Tentative ruling:

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

The debtors' confirmed plan calls for plan payments of $3,825 per month for 60 months, with a 100% dividend to general unsecured creditors. Under the proposed modified plan, the debtors would reduce their plan payment to $3,450 and the dividend to 94%. The reason for the proposed modification is that the debtors fell

behind in their plan payments because they owed income taxes for 2012 totaling $9,311, which they paid off in April, May, and June 2013.[1] The debtors claim they need to reduce their plan payment because debtor Arnel Delinila has had to begin commuting 115 miles per day for his job, thus increasing their transportation expenses. The debtors have attempted to compensate for those increased expenses by reducing their home maintenance, recreation, and charitable contribution expenses, but their total expenses are still $375 higher than before.

The trustee opposes the motion on two grounds. First, the debtors have non-exempt assets totaling $165,360 in value and general unsecured claims totaling $158,659; thus, in order to pay as much as creditors would receive in a hypothetical chapter 7 case, the plan must pay 100%. Second, despite the reduction in their monthly net income resulting from their increased expenses, the debtors continue to make voluntary contributions totaling $1,577 per month to retirement accounts. The trustee contends the voluntary contributions are not reasonable or necessary in any amount, but especially where, as here, the debtors propose to reduce the dividend to unsecured creditors. The trustee concludes the plan has not been proposed in good faith.

The motion will be denied on the trustee's first point – that the plan does not meet the liquidation test. In addition, while the court acknowledges the debtors' attempt to offset the increase in their transportation expenses by reducing other expenses, the court agrees with the trustee that given the circumstances, the debtors' continuing voluntary retirement contributions of $1,577 per month are not reasonable. In this regard, the court notes that the debtors are also repaying a TSP loan at $1,439 per month. And they continue to budget fairly generous amounts for categories that have been added to the official form Schedule J – $130 for grooming, $100 for emergencies, and $100 for miscellaneous expenses.

Finally, in April, May, and June of this year – after debtor Arnel Delinila began commuting – the debtors were able, in three months' time by their own account, to repay $9,311 in taxes and to pay $825 per month, or $2,475, to the trustee (the latter, according to the trustee's Notice of Default and Intent to Dismiss Case). Thus, for those three months, the debtors had $11,786 in net income – an average of $3,928 per month – that but for the taxes, would have been available to make plan payments. In other words, but for the taxes, the debtors could have made the plan payments required under the confirmed plan, and a reduced plan payment is not necessary. And because they are seeking to reduce their plan payment by only $375, the debtors could continue with the same plan payment they have been making under the confirmed plan and still make voluntary retirement contributions of $1,202 per month ($1,577 – $375).

For the reasons stated, the court concludes that the debtors have failed to satisfy their burden of demonstrating that the plan meets the liquidation test and that it has been proposed in good faith, and the motion will be denied.

The court will hear the matter.

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1 The debtors testify they have changed their W-4's so they do not expect to have the tax problem next year.

37. 12-36895-D-13 MC-1 — KEVIN CRONON — MOTION TO MODIFY PLAN 7-18-13 [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.

38. 13-21396-D-13 TBK-4 — RICK/MELANIE PAYNE — MOTION TO MODIFY PLAN 7-22-13 [53]

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.

39. 11-32797-D-13 JB-2 — MATTHEW RAY — OBJECTION TO CLAIM OF BANK OF NEW YORK, CLAIM NUMBER 1 7-9-13 [48]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the debtor's objection to claim and the claim will be disallowed as a secured claim and allowed as a general unsecured claim. The court will issue a minute order for this relief. No appearance is necessary.

40. 13-28219-D-13 RDG-2 — SALEEM REHMAN AND MANANI NASIR — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-9-13 [27]

Final ruling:

This case was dismissed on August 22, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

41. 12-28729-D-13 PD-1 — JOAO/GRACIELA FERNANDES — CONTINUED MOTION TO APPROVE LOAN MODIFICATION 6-6-13 [26]

42. 11-33940-D-13 DN-6 — JULIO/TAMMI ADAME — MOTION TO INCUR DEBT 8-20-13 [86]

43. 13-28045-D-13 RDG-2 — DENISE REES — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-9-13 [29]

Final ruling:

This case was dismissed on August 22, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

44. 13-22160-D-13 ARM-1 — JULIE JOYCE — MOTION FOR APPROVAL OF POST PETITION DUES AS AN ADMINISTRATIVE PRIORITY CLAIM AND/OR MOTION REQUIRING DEBTOR PROVIDE FOR PAYMENT OF POST PETITION DUES IN THE PLAN 8-20-13 [87]

45. 13-24969-D-13 DN-2 — SUE KRAMER — MOTION FOR PERMISSION TO ENTER INTO TRIAL PAYMENT PLAN 8-20-13 [31]

Tentative ruling:

This is the debtor's motion for permission to enter into a trial period loan modification. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. The court finds, however, that the moving papers do not present sufficient information to permit the parties to evaluate the proposed trial period payments. The motion states that the debtor's mortgage payment will be $1,215 and that the modification will reduce the debtor's mortgage payment. The moving papers do not indicate what the mortgage payment has been; thus, without consulting the record in this case, parties cannot determine how much the debtor will be saving each month on her mortgage payment.

Further, neither the moving papers nor the information from the mortgage

company filed as an exhibit discloses whether the $1,215 payment is to include taxes and insurance. According to the debtor's confirmed plan in this case, she has been making a mortgage payment of $1,615 per month, which, according to her Schedule J, does not include taxes and insurance, on which she has separately been paying $150 and $100 per month, respectively. Thus, the debtor will save between $400 and $650 per month, depending on whether or not the new mortgage payment will include taxes and insurance. This information should have been provided in the moving papers; as it was not, the court is inclined to deny the motion.

The court will hear the matter.

46.	12-35682-D-13 SLF-6	CHARLES/TAMMY CARSTERSEN	CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S), FEE: $10,511.00, EXPENSES: $0.00. 7-15-13 [67]
47.	12-35682-D-13 SLF-7	CHARLES/TAMMY CARSTERSEN	CONTINUED MOTION FOR COMPENSATION FOR GARY FARRAR, CHAPTER 7 TRUSTEE(S), FEE: $2,340.00, EXPENSES: $0.00. 7-15-13 [72]
48.	13-23782-D-13 RDG-1	CAROLYNN RODRIGUEZ	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL GREER 8-9-13 [35]

49.	13-24097-D-13 PK-1	RONALD/STACEY GREENMYER	CONTINUED MOTION TO CONFIRM PLAN 7-8-13 [41]

Final ruling:

The relief requested in the motion is supported by the record, no timely opposition to the motion has been filed, and the court has considered the corrected proof of service. 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.