

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

September 24, 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.

1.	13-90900-D-13	CLIFF/CARMOLETTA FERRELL	MOTION TO CONFIRM PLAN
	JCK-3		8-9-13 [31]

Final ruling:

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

2. 11-94101-D-13 CARLOS/LIDUBINA VALENCIA MOTION TO MODIFY PLAN
JCK-2 8-21-13 [30]

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.

3. 12-90402-D-13 STUART KURLAND OBJECTION RE: TRUSTEE'S FINAL
REPORT AND ACCOUNT BY VFC
PARTNERS 10 LLC
7-17-13 [70]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the objection of VFC Partners 10 LLC ("VFC") to the trustee's Final Report and Account. The trustee has filed a declaration in response to the objection. For the following reasons, the objection will be overruled.

The issue centers on the timing of certain events in this case. The case was filed February 14, 2012. On May 13, 2012, the debtor filed a motion to confirm an amended chapter 13 plan. The plan provided that the debtor would make plan payments of \$1,500 per month for 59 months and a lump-sum payment of \$121,480 in the final month of the plan. From these payments, the trustee would pay his compensation, the debtor's attorney's fees, the secured claim of VFC in the amount of \$150,000 with interest at 4.5%, plus 3% of general unsecured claims estimated at \$246,771 (of which \$220,000 was the estimated amount by which VFC's claim was undersecured). VFC's secured claim was provided for in Class 2, to be paid \$1,180 per month for 59 months and \$109,303 in the 60th month of the plan. On June 19, 2012, the debtor filed a motion to value VFC's collateral, a first position deed of trust against commercial property, at \$150,000. The claims bar date for non-governmental units was June 26, 2012. VFC did not file a timely proof of claim. The hearings on the motion to confirm the plan and the motion to value collateral were continued and ultimately granted, on August 9, 2012 and August 15, 2012, respectively. On August 9, 2012, VFC filed a late proof of claim asserting a secured claim of \$150,000 and an unsecured claim of \$227,576.

On November 1, 2012, the trustee filed and served on the debtor and his counsel a Notice of Timely Filed Claims, which advised the debtor that the claims bar date for non-governmental units was June 26, 2012; that VFC had filed a proof of claim on August 9, 2012; and that the deadline for the debtor to file a proof of claim on behalf of a creditor would be December 31, 2012. The debtor did not file a proof of claim for VFC. On January 10, 2013, VFC filed a motion for relief from stay, contending the debtor had failed to keep its collateral insured. The debtor did not oppose the motion, and the motion was granted on March 6, 2012. VFC has presumably foreclosed on its collateral.

On March 29, 2013, the trustee spoke by phone with VFC's counsel, who told him VFC was entitled to \$15,880 of the funds on hand in the case. The trustee disagreed, but suggested VFC's counsel contact the debtor's counsel. The trustee also put a hold on the monthly disbursements set to go out later that day. By April 30, 2013, the trustee had heard nothing further from VFC or the debtor, and nothing further had been filed by either; thus, the trustee released the hold and the remaining funds in the case were disbursed that day. On July 17, 2013, the trustee filed his Final Report and Account, indicating that the only timely-filed unsecured claim, filed by Commercial Trade, Inc. for \$1,647.77, had been paid in full, and that the case had been completed on April 24, 2013. The report also stated that the total that had been paid into the plan by the debtor was \$21,000, of which \$17,236 had been refunded to the debtor. On August 19, 2013, VFC filed this objection to the trustee's final report.

VFC makes five arguments. First, it contends the remaining funds on hand should be released to VFC because the sole purpose of the plan was "to reduce the obligation to VFC and place the property in the Debtor's hands free and clear for the sum of \$150,000 rather than the \$370,000 owed." VFC's objection, filed Aug. 19, 2013 ("Obj."), at 4:1-3.1 VFC points out that the debtor continued to benefit from his business operated on the property that was VFC's collateral, while paying \$1,180 per month to VFC through the plan; thus, VFC contends, the debtor got the benefit of his bargain. The court does not disagree with this proposition, but it does not overcome the other obstacles to VFC's objection discussed below. VFC also likens the facts here to In re Avery, 272 B.R. 718 (Bankr. E.D. Cal. 2002), in which another department of this court held that a chapter 13 trustee had unreasonably unilaterally treated a creditor's proof of claim as a claim for "nothing," and thus, disregarded it. 272 B.R. at 725. The court vacated the final decree in the case on the basis that the trustee had not fully administered the case. Id. at 734. The present case is distinguishable - in Avery, the creditor's proof of claim was timely filed; it was merely misinterpreted by the trustee, whereas here, VFC's proof of claim was not timely filed. Other considerations therefore prevail.

VFC next contends it was not required to file a proof of claim to be paid through the plan on its secured claim. VFC's counsel expanded on this theme in her conversation with the trustee, asserting that this was the law regardless of the language of this court's standard-form plan, and thus, regardless of the language of the debtor's confirmed plan. In the motion, VFC cites (1) Fed. R. Bankr. P. 3002(a), which refers only to unsecured creditors, and thus, does not appear to require a secured creditor to file a proof of claim, and (2) Collier on Bankruptcy, which states that "[t]he general rule in a chapter . . . 13 case is that Rule 3002(a) does not require filing of a proof of claim by a creditor asserting a secured claim." 9 Collier on Bankruptcy § 3002.01[2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). By contrast, this court's standard-form plan and the debtor's plan provide that "[a] timely proof of claim must be filed by or on behalf of a creditor, including a secured creditor, before a claim may be paid pursuant to this plan." Debtor's first amended plan, filed May 13, 2012 ("Plan"), at sec. 3.01.

The court need not resolve the question whether Rule 3002(a), apparently limiting the proof of claim requirement to unsecured creditors, prevails in this case over § 1327(a) of the Bankruptcy Code, providing that the provisions of a confirmed plan bind the parties (although it seems unlikely), because VFC is not seeking to be paid on account of its secured claim, but on account of its unsecured claim, and for that, it clearly was required to (Fed. R. Bankr. P. 3002(a)) but did not file a timely proof of claim. The debtor's plan provided:

If, on motion of a creditor, the court terminates the automatic stay to permit a creditor holding a Class 1 or 2 secured claim to proceed against its collateral, unless the court orders otherwise, Trustee shall make no further plan payments on account of such secured claim, any portion of the secured claim not previously satisfied under this plan shall be satisfied as a Class 3 claim, and any deficiency remaining after the disposition of the collateral shall be satisfied as a Class 7 unsecured claim provided a timely proof of claim or amended proof of claim is filed and served on Debtor and Trustee.

Plan, at sec. 6.03. Because VFC failed to file a timely proof of claim, it was not entitled to be paid on account of its unsecured claim. See also Order Granting Debtor's Motion to Value Collateral of VFC Partners 10 LLC, filed Aug. 15, 2012, at 1:22-23 [secured claim determined to be \$150,000; "the deficiency shall be allowed as a general unsecured claim provided that a timely proof of claim is filed."].

Next, VFC would characterize the debtor's motion to value collateral as an informal proof of claim on behalf of VFC to which VFC's formal proof of claim filed August 9, 2012 relates back. In addition to the motion to value, VFC cites as among "the written documents that establish VFC's claim" (Obj. at 7:12-13) the debtor's amended plan that set forth the terms on which VFC's secured claim would be paid, and the debtor's schedules, which listed VFC as holding a \$370,000 claim secured by property valued at \$150,000, and which did not list the claim as contingent or disputed. The problem is that none of these documents satisfies the requirement that the informal proof of claim have been filed "by or on behalf of the creditor." See Pac. Res. Credit Union v. Fish (In re Fish), 456 B.R. 413, 417 (9th Cir. BAP 2011), quoting Dicker v. Dye (In re Edelman), 237 B.R. 146, 155 (9th Cir. BAP 1999). Obviously, applying the informal proof of claim doctrine every time a debtor files a proposed chapter 13 plan or lists a creditor on his schedules as undisputed and noncontingent would virtually eliminate the requirement that creditors file proofs of claim. As to the motion to value collateral, although VFC ultimately chose not to oppose it, it is clear the debtor filed the motion on his own behalf, not on VFC's behalf - he was seeking to modify VFC's claim, not to establish it.

Fourth, VFC contends there would be no prejudice to any party in allowing its claim to relate back to "its" informal proof of claim, filed June 19, 2012 (actually, the debtor's motion to value). In VFC's view, disallowing the claim would result in an undeserved windfall to the debtor. Be that as it may, "a lack of prejudice is not dispositive with respect to whether an informal proof of claim exists. Creditor still must establish each of the elements that have consistently been required by the cases for over seventy-five years [including that the informal proof of claim have been filed by or on behalf of the creditor]." Edelman, 237 B.R. at 155.

Finally, VFC argues that under § 502(a) of the Code, its proof of claim, although filed late, was deemed allowed because no one objected to it, adding that section 3.01 of the court's standard-form plan, which requires even a secured creditor to file a timely proof of claim in order to be paid through the plan, is "an end run around the federally mandated claims objection process and allows a trustee to unilaterally ignore claims without providing the claimant with an opportunity to be heard." Obj. at 10:14-16. This contention would, essentially, override not only the debtor's confirmed plan, which has binding effect under the Code, but Rule 3002(a) and (c) as well, which requires unsecured creditors, at any rate, to file timely proofs of claim. VFC's complaint that its claim was essentially disallowed without VFC having an opportunity to be heard overlooks the

fact that VFC had notice of the plan and its various provisions before the plan was confirmed and before the claims bar date, and either chose or neglected to file a timely proof of claim. The court will not overlook the several provisions of the confirmed plan in this case under which VFC's late-filed claim resulted in the unsecured portion of the claim not being paid through the plan and under which VFC's motion for relief from stay resulted in its secured claim not being paid.

For the reasons stated, the objection will be overruled by minute order. No appearance is necessary.

¹ VFC appears to believe the trustee is still holding funds in this case; however, the trustee has testified that all funds have been disbursed, with the debtor receiving a refund of the otherwise undisbursed funds.

4. 13-90604-D-13 SERGIO/LORENA CHAVEZ MOTION TO CONFIRM PLAN
CJY-3 8-13-13 [51]

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.

5. 10-90409-D-13 EDMUND PISAREK OBJECTION TO CLAIM OF INTERNAL
PLG-2 REVENUE SERVICE, CLAIM NUMBER
13
7-29-13 [45]

Tentative ruling:

This is the debtor's objection to the claim of the Internal Revenue Service (the "Service"). The Service has filed opposition, and the debtor has filed a response. For the following reasons, the objection will be sustained, with the additional provision described below.

The debtor objected to the claim on the ground that the Service's proof of claim was not timely filed. The Service admits its claim was not timely filed, but contends it did not have notice of the bankruptcy filing in time to file a timely proof of claim. The Service cites a line of cases for the proposition that a late-filed claim may be allowed in a chapter 13 case. Those cases are not from within the Ninth Circuit. Within the Ninth Circuit, at least 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").

The Service also cites, however, a line of cases, including a Ninth Circuit decision, for the proposition that where a debtor fails to provide notice of a chapter 13 case in time for a creditor to file a timely proof of claim, the debtor's debt to the creditor will not be discharged by the debtor's discharge in the case. Ellett v. Stanislaus, 506 F.3d 774, 777 (9th Cir. 2007). The debtor concedes the point, agreeing that his discharge in this case will not cover his liability to the Service. He maintains, however, that the claim should be disallowed as late, particularly because it renders his plan infeasible, and he wishes to complete the plan. The debtor consents to the issuance of an order sustaining the objection to claim but "specifically holding that the plan did not provide for payment of the [Service's] claim because the [Service] did not have timely notice of the bankruptcy." Debtor's Response, filed Sept. 6, 2013, at 2:12-13.

The court will sustain the objection and disallow the claim in any event, but will include the additional provision just quoted, or similar language satisfactory to the Service and the debtor. The court will hear the matter.

6. 13-90919-D-13 HARRY/CAROL BERGER MOTION TO CONFIRM PLAN
ALF-1 8-2-13 [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.

7. 13-90820-D-13 ROBERT/PAMELA WILLIAMS OBJECTION TO CLAIM OF WAKE
CLH-3 CONSTRUCTION, CLAIM NUMBER 6
8-6-13 [42]

Final ruling:

This is the debtors' objection to the claim of Wake Construction. The objection will be overruled because the moving parties served only the objection itself, and not the notice of hearing. The objection will be overruled by minute order. No appearance is necessary.

8. 11-91221-D-13 EDIK/CYNTHIA POURKALDANI OBJECTION TO CLAIM OF
DN-2 STANISLAUS CUONTY REVENUE
RECOVERY, CLAIM NUMBER 7
8-9-13 [38]

Final ruling:

This is the debtor's objection to the claim of the Stanislaus County Tax Collector (the "Tax Collector"), Claim No. 7 on the court's claims register. On August 26, 2013, after this objection was filed, the Tax Collector withdrew the claim; as a result, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

9. 09-92423-D-13 ANDREW/VERONICA FERRIS MOTION TO MODIFY PLAN
CJY-2 8-19-13 [131]

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.

10. 12-92923-D-13 LISA COX MOTION TO MODIFY PLAN
BSH-1 8-6-13 [25]

Final ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied because the moving party failed to serve the State of Oklahoma Tax Commission (the "Commission") in the manner required by the applicable rule. The Commission has not filed a proof of claim in this case; thus, the moving party was required to serve the Commission at its address listed on her schedules or her list of creditors. Fed. R. Bankr. P. 2002(g)(2). Instead, the moving party served the Commission at a different address, and has provided no explanation of this discrepancy.

In addition, for the guidance of the parties, the court adds that it would likely be unable to confirm the plan in any event because the plan provides for the claim of Santander Consumer USA on account of a 2008 Jeep Grand Cherokee in Class 2, with ongoing monthly payments, whereas according to Santander's proof of claim filed in this case, the vehicle has been repossessed and sold, and Santander holds an unsecured claim for the deficiency balance.

As a result of the above-described service defect, the motion will be denied, and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

11. 13-91125-D-13 CHRISTOPHER/PAULA MOTION TO VALUE COLLATERAL OF
JAD-1 CARPENTER GREEN TREE
7-30-13 [19]

Final ruling:

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

12. 13-90431-D-13 JEMIS/ELIZABETH SEPORGHAN MOTION TO CONFIRM PLAN
JCK-5 8-15-13 [58]

13. 10-94942-D-13 ALEXANDER/DONNA FRANCO MOTION TO MODIFY PLAN
CJY-1 8-20-13 [31]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is 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. 12-92642-D-13 MARSHALL/CARA CROOM MOTION TO MODIFY PLAN
JAD-1 8-13-13 [32]

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.

15. 13-90342-D-13 GREGORY SCOTT CONTINUED MOTION TO CONFIRM
DCJ-3 PLAN
7-15-13 [58]

16. 12-93060-D-13 LARUE/SANDRA KINERSON MOTION TO WITHDRAW CLAIM NUMBER
12, 13 AND 14
8-16-13 [35]

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 Withdraw Proofs of Claim Nos. 12, 13 & 14 Under Bankruptcy Rule 3006 is supported by the record. As such the court will grant the Motion to Withdraw Proofs of Claim Nos. 12, 13 & 14 Under Bankruptcy Rule 3006. Moving party is to submit an appropriate order. No appearance is necessary.

17. 09-91565-D-13 ARLENE ELLIOTT OBJECTION TO CLAIM OF
DN-3 STANISLAUS COUNTY TAX COLLECTOR
8-9-13 [57]

Final ruling:

This is the debtor's objection to the claim of the Stanislaus County Tax Collector (the "Tax Collector"), Claim No. 12 on the court's claims register. On September 5, 2013, after this objection was filed, the Tax Collector withdrew the claim; as a result, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

18. 12-92866-D-13 JOHN/JULIE STEWART MOTION TO MODIFY PLAN
CJY-1 8-15-13 [30]

19. 13-91270-D-13 DONALD/SONDRA WISSNER OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
8-22-13 [18]

20. 09-90473-D-13 JEFFREY/KRISTI HALE MOTION TO MODIFY PLAN
DCJ-3 8-6-13 [55]

21. 13-91479-D-13 FAUSTO FLORES MOTION TO VALUE COLLATERAL OF
TOG-1 BANK OF AMERICA, N.A.
Final ruling: 8-19-13 [9]

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

22. 10-91783-D-13 JUAN MORALES CHAVEZ MOTION TO VALUE COLLATERAL OF
JDP-1 JP MORGAN CHASE BANK, N.A.
Final ruling: 8-22-13 [41]

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of JP Morgan Chase 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 JP Morgan Chase Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

23. 12-93184-D-13 MICHAEL BUCIO MOTION TO CONFIRM PLAN
LTF-4 8-6-13 [123]

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.

24. 12-91489-D-13 KEVIN/BARBARA PARSONS MOTION TO MODIFY PLAN
CJY-5 8-20-13 [81]

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.

25. 13-91302-D-13 ALLAN/GINGER CRUZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
8-30-13 [19]

26. 13-91305-D-13 DANIEL VITELA MORALES AND OBJECTION TO CONFIRMATION OF
RDG-2 JODI VITELA PLAN BY RUSSELL D. GREER
8-30-13 [24]

27. 13-90809-D-13 HAL SMULSON MOTION TO EXTEND AUTOMATIC STAY
SSA-6 9-9-13 [78]

28. 13-91323-D-13 DANNY/MARIA RAYA
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-30-13 [24]

29. 13-90270-D-13 JAIME RIVERA
YG-5

AMENDED MOTION TO VACATE
DISMISSAL OF CASE
9-5-13 [111]

CASE DISMISSED 8/22/13

Final ruling:

This is the debtor's motion to vacate the order dismissing this case. The motion will be denied for the following reasons: (1) the moving papers include a docket control number, YG-005, that has previously been used by the moving party in this case, contrary to LBR 9014-1(c)(3); (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 any of the three creditors requesting special notice in this case at their designated addresses, as required by the same rule; and (4) the original notice of hearing incorrectly gave the location of the hearing as the Sacramento courthouse (and the incorrect floor and courtroom number); a second notice of hearing (albeit not entitled an amended notice) gives the location as the Modesto courthouse in the caption but the Sacramento courthouse in the text, an error particularly significant here, where the notice stated that opposition shall be presented at the hearing.

The motion will be denied for the additional independent reason that the motion does not demonstrate that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(6). The motion states that after the court conditionally denied the trustee's motion to dismiss the case, the debtor was unable to obtain an appraiser's declaration and appraisal supporting a motion to value collateral in time to file a motion to confirm a plan on 45 days' notice and still meet the deadline imposed by the conditional order. The debtor claims that "the majority of the issues were worked out on Debtor's case in between the June 25th Motion to Dismiss hearing and the August 13th Motion to Confirm hearing but it was impossible to move the Motion to Confirm hearing given the 45-day notice requirement." Motion to Vacate Order of Dismissal, filed September 5, 2013, at 2:15-17.

There are several problems with this theory. First, the motion to value collateral would have been denied in any event had it not become moot as a result of the dismissal of the case, because the moving party failed to serve the respondent in compliance with Fed. R. Bankr. P. 7004(a)(1), as required by Fed. R. Bankr. P. 9014(b). The court also notes that the appraiser's declaration, which was apparently the reason for the delay, does not bear evidence of signature in any manner authorized by LBR 9004-1(c)(1)(B), although other documents filed in this

case do bear such evidence, suggesting that counsel is aware of the appropriate means for designating a signature. Finally, even if the motion to value collateral had been granted, the court would not have been in a position to confirm a plan, because there is no indication the debtor had resolved the issues raised by the trustee and JPMorgan Chase Bank in their objections to confirmation.

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

30. 11-91678-D-13 MELVIN/DENISE DAILEY MOTION TO APPROVE LOAN
CJY-1 MODIFICATION
9-4-13 [60]
31. 10-92783-D-13 JAMES/ANGELA WATSON CONTINUED MOTION TO INCUR DEBT
TPH-5 AND/OR MOTION TO APPROVE LOAN
MODIFICATION
7-8-13 [70]
32. 10-92783-D-13 JAMES/ANGELA WATSON CONTINUED MOTION TO MODIFY PLAN
TPH-6 7-31-13 [78]

33. 10-92783-D-13 JAMES/ANGELA WATSON
TPH-7

MOTION TO INCUR DEBT
9-3-13 [90]

34. 13-91633-D-13 DAVID/CAROL TRUAX
CJY-1

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
9-16-13 [11]