UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

September 25, 2018 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. 18-90201-D-13 WLG-2 — STEPHANIE NEHER — MOTION TO CONFIRM PLAN 8-20-18 [78]

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 "attached service list" referred to in the proof of service is not attached; thus, the court cannot determine that all creditors were properly served; (2) the exhibits described in the exhibit cover sheet are not attached; and (3) the proposed plan is not signed by the debtor or the debtor's attorney.

For the reasons stated, the motion will be denied by minute order and the court need not reach the other issues raised by the trustee and Rama NPL 1, LLC at this time. The motion will be denied by minute order. No appearance is necessary.

2. 17-90409-D-13 JOHNATHAN MOHR — MOTION TO CONFIRM PLAN
DCJ-5 — 8-14-18 [113]

3. 17-90709-D-13 MOHAMMAD FAROOQI — MOTION TO MODIFY PLAN
BSH-2 — 7-26-18 [26]

Final ruling:

This is the debtor's motion to confirm a chapter 13 plan. The moving papers say nothing about the plan being an amended plan or a modified plan. The debtor has filed three different chapter 13 plans in this case, all titled simply "Chapter 13 Plan," with nothing in the title to distinguish them from one another. The proof of service refers only to a "Chapter 13 Plan," and thus, it does not evidence whether the plan served was the one filed July 23, 2018 or the one filed July 26, 2018 (or the original plan). The court pointed out this defect when it denied an earlier motion, and advised the debtor to file a corrected proof of service to clarify which plan was served. The debtor has not filed a corrected proof of service.

In addition, the debtor filed two different notices of hearing of this motion, one giving the hearing date as September 18, 2018 and the other, as September 25, 2018. But the titles of the two notices of hearing were the same: "Notice of Hearing on Motion to Confirm Chapter 13 Plan." The proof of service filed with the second one, which refers to service of a document entitled "Amended Notice of Motion to Confirm Chapter 13 Plan," refers to a document that is not on file and there is insufficient evidence creditors were served with the notice of hearing giving the correct hearing date.

Finally, the moving party failed to serve the creditor listed on his Schedule D only as "DOT Lien Holder" with no address. This creditor is listed in the debtor's proposed plans as a Class 4 creditor to be paid directly by the debtor's non-filing spouse. That fact notwithstanding, this creditor is scheduled as a creditor of the debtor and the debtor has failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(9).

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

4. 18-90309-D-13 JAD-1 — RONNIE KEOMUANGCHANH AND OURAY SANACHAY — MOTION TO CONFIRM PLAN 7-16-18 [19]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

5. 17-90013-D-13 JAD-2 — EDWARD/LINDA GABRIEL — MOTION TO MODIFY PLAN 7-25-18 [60]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

6. 18-90326-D-13 JAD-2 — EDWARD/CYNTHIA ROCHA — MOTION TO CONFIRM PLAN 7-16-18 [31]

Tentative ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(9). The moving parties failed to serve the two creditors listed on their Schedule H as co-debtors on the debtors' car loans. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes co-debtors of the debtors. In addition, the debtors failed to comply with Fed. R. Bankr. P. 1007(a)(1), which requires a debtor to include on his or her master address list the names and addresses of all parties included or to be included on his or her schedules, including Schedule H.

As a result of this service defect, the motion will be denied by minute order. Alternatively, the court will continue the hearing to allow the debtors to cure this service defect.

7. 18-90430-D-13 JAD-1 — VINCENT COLMORE AND ABANEATHA BISBEE COLMORE — CONTINUED MOTION TO VALUE COLLATERAL OF GATEWAY ONE LENDING & FINANCE, LLC
7-25-18 [18]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

8. 18-90430-D-13 JAD-2 — VINCENT COLMORE AND ABANEATHA BISBEE COLMORE — CONTINUED MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL SERVICES, INC.
7-25-18 [23]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

9. 18-90430-D-13 JAD-3 — VINCENT COLMORE AND ABANEATHA BISBEE COLMORE — MOTION TO CONFIRM PLAN
8-1-18 [28]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

10. 17-91032-D-13 RDG-2 — JOSEPH/TERI FREITAS — OBJECTION TO CLAIM OF DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE, CLAIM NUMBER 21-1
8-22-18 [32]

11. 17-90751-D-13 DEBBIE DEAN
DEF-2

CONTINUED OBJECTION TO CLAIM OF PORTFOLIO RECOVERY ASSOCIATES, LLC, CLAIM NUMBER 5
6-24-18 [37]

Tentative ruling:

This is the debtor's objection to the claim of Portfolio Recovery Associates ("Portfolio"), Claim No. 5 on the court's claims register, in the amount of $17,468.84. Portfolio has not filed a response. However, that does not by itself entitle the debtor to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Thus, the court will consider the merits of the objection, and for the following reasons, the objection will be overruled.

The debtor states that her objection "is limited in scope specifically to the alleged amount" (Obj. to Claim, filed June 24, 2018, at 3:25), but she does not indicate what amount she believes would be accurate. In any event, the debtor has not submitted evidence sufficient to overcome in any amount the prima facie validity afforded the claim under Fed. R. Bankr. P. 3001(f). The essence of the debtor's objection is that the claim was partially paid in her prior chapter 13 case. (That case was dismissed for failure to make payments under a confirmed plan; the debtor did not receive a discharge.) The problem with the debtor's analysis is that there were two different proofs of claim filed in the prior case and payments were made on both, through the confirmed plan, but the debtor's objection refers to the payments made on the first-filed claim whereas the claim she objects to is for the balance remaining due on the second-filed claim.

On her schedules filed in the prior case, the debtor listed Santander Consumer USA ("Santander") twice – once on her Schedule D, for $9,527 secured by the debtor's 2007 Hyundai Elantra (the "2007 Hyundai"), and a second time on her Schedule F, for $14,864 on account of a "deficiency - wrecked vehicle." Santander filed two different proofs of claim – one for $9,153.15 secured by the 2007 Hyundai (Claim No. 2) and the other for $18,173.12 unsecured (Claim No. 7). Attached to the secured claim was a copy of a Retail Installment Sale Contract under which the debtor purchased the 2007 Hyundai, in June of 2007. Attached to the unsecured claim was a copy of a Retail Installment Sale Contract under which the debtor purchased a 2008 Hyundai Elantra (the "2008 Hyundai"), in October of 2007. It is clear from the VIN numbers on the contracts that the debtor purchased two different vehicles. It also appears the 2008 Hyundai is the one that was surrendered or repossessed and that Santander's Claim No. 7 was for the "deficiency balance" due on the "wrecked vehicle," as listed on the debtor's Schedule F in the prior case.

In the prior case, the debtor obtained an order valuing the 2007 Hyundai at $5,762. Deducting that amount from Santander's Claim No. 2, $9,153.15, left an unsecured portion of $3,391.15. According to the trustee's final report in the prior case, he paid the secured portion of the claim, $5,762, in full with $278.53 in interest. He also paid $1,922.35 toward the unsecured portion of the claim,

reducing it from $3,391.15 to $1,468.80. In her present objection, the debtor appears to contend Portfolio's claim is too high because it does not account for those payments. Thus, the debtor appears to believe Portfolio's claim should be reduced by a total of $7,684.35 ($5,762 + $1,922.35).

The problem is that those payments in the prior case were made toward Santander's Claim No. 2 – the claim secured by the 2007 Hyundai, not its Claim No. 7 – the claim for the deficiency balance on the 2008 Hyundai, whereas the claim the debtor is objecting to, Portfolio's Claim No. 5 in the present case, is for the deficiency balance on the 2008 Hyundai, not the 2007 Hyundai loan. (To date, no claim has been filed on the 2007 Hyundai loan.) Portfolio's Claim No. 5 in this case, on its face, states the basis of the claim as "Unsecured Deficiency Auto." Attached to the claim is a copy of the Retail Installment Sale Contract for the purchase of the 2008 Hyundai – the same contract that was attached to Santander's unsecured Claim No. 7 in the prior case.

The debtor discusses only the payments made in the prior case on Claim No. 2 – the claim secured by the 2007 Hyundai. The trustee also made a total of $10,361.63 in payments on Claim No. 7, reducing it from $18,173.12 to $7,811.49. Thus, arguably, Claim No. 5 in the present case should be $7,811.49, not $17,468.84. However, the $7,811.49 figure fails to account for the post-petition and post-dismissal interest apparently accrued on the claim as a result of the fact that the debtor did not receive a discharge in the prior case. See, e.g., In re Whitmore, 154 B.R. 314, 315-16 (Bankr. D. Nev. 1993). In any event, the debtor has not raised the argument.

For the reasons stated, the debtor has failed to overcome the prima facie validity of the proof of claim as to the amount of the claim, and the objection will be overruled. The court will hear the matter.

12. 17-90554-D-13 JASPAL SINGH
RDG-3

CONTINUED OBJECTION TO CLAIM OF WELLS FARGO EQUIPMENT FINANCE, CLAIM NUMBER 29
7-25-18 [120]

Tentative ruling:

This is the trustee's objection to the claim of Wells Fargo Equipment Finance ("Wells Fargo"), Claim No. 29 on the court's claims register, on the ground it was filed late. Wells Fargo has filed opposition. For the following reasons, the objection will be sustained.

Wells Fargo does not dispute that its proof of claim was filed late; it argues instead that it did not receive notice of the bankruptcy case in time to file a timely proof of 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) 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 is present here. Thus, 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"); 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.").

Wells Fargo attempts to distinguish Gardenhire and a more recent case, Spokane Law Enforcement Fed. Credit Union v. Barker (In re Barker), 839 F.3d 1189 (9th Cir. 2016), on the ground the creditors in those cases had notice of the bankruptcy cases. In Gardenhire, the creditor – the IRS – received notice of an order vacating the earlier mistaken dismissal of the case just 13 days before the claims bar date for governmental units. In Barker, the creditor's argument was less compelling – the creditor claimed a disgruntled employee had failed to file the claim on time. In each case, and in the others cited above, the court analyzed the issue in terms of its equitable discretion and concluded it had none.

The Gardenhire court quoted favorably from a Bankruptcy Appellate Panel decision: "no source of discretion [for enlarging the claims filing period of Rule 3002(c)] exists – neither equitable jurisdiction, nor § 105, nor anything else – and a source is not created even if a good reason is presented for why a source should exist." Gardenhire, 209 F.3d at 1150, quoting Dicker v. Dye (In re Edelman), 237 B.R. 146, 153 (9th Cir. BAP 1999).[1] In this court's view, that concludes the matter.

Finally, Wells Fargo cites In re Miranda, 269 B.R. 737 (Bankr. S.D. Tex. 2001), in which the court denied a creditor's unopposed motion to allow the late filing of a proof of claim in a chapter 13 case "because the Court simply does not have authority to give the relief requested." 269 B.R. at 739. The court added, however, that it had no authority to prohibit the creditor from filing a late claim. Id. at 740. Citing § 502(a) of the Code, the court stated that a late-filed claim would be allowed if no party-in-interest objected to it (id. at 740-41) and that such a claim could be paid through a chapter 13 plan if not objected to. Id. at 741.

Wells Fargo cites the case for the proposition that "[i]n such case, the chapter 13 trustee need simply refrain from objecting to the tardy claim and include the creditor in the plan distribution." Wells Fargo's Opp., filed Aug. 23, 2018, at 4:3-4. Wells Fargo adds that the debtor has proposed a 100% plan, and thus, apparently wants to resolve all claims against him. Stating that "no one benefits from [its] claim being disallowed" (id. at 4:9-10), Wells Fargo posits the trustee should withdrawn this objection.

The court agrees with the trustee's contrary position that the size of Wells Fargo's claim is such that including it in the debtor's plan would significantly reduce the dividend to other unsecured creditors. The amount of Wells Fargo's claim exceeds the total of the other unsecured claims, as estimated in the debtor's confirmed plan, and there is no room in the debtor's budget for him to increase the amount of his plan payment. Thus, allowing Wells Fargo's claim would significantly harm the other creditors.

For the reasons stated, the objection will be sustained. The court will hear the matter.

1 One court has noted that "Rule 3002(c)(6) was amended in 2017 'to expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim.'" In re Lovo, 584 B.R. 79, 80, n.1 (Bankr. S.D. Fla. March 27, 2018), quoting Rule 3002 advisory committee's note to 2017 amendment. The court need not consider the amended rule because, as in Lovo, it was not in effect when this case was filed. (The amendment went into effect December 1, 2017; this case was filed June 30, 2017.)

13. 18-90455-D-13 DCJ-2 — STANLEY SALBECK — MOTION TO CONFIRM PLAN 8-9-18 [24]

14. 18-90455-D-13 RDG-1 — STANLEY SALBECK — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 8-13-18 [30]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The objection was brought on the ground the debtor had claimed exemptions under both of two mutually exclusive sets of exemption statutes. On August 18, 2018, the debtor filed an amended Schedule C on which he claims exemptions under a single set of exemption statutes. As a result of the filing of the amended Schedule C, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

15. 18-90457-D-13 RDG-1 — MAHESH GANDHI — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 8-13-18 [23]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The objection was brought on the ground the debtor had failed to file a spousal waiver to permit the debtor to claim the exemptions provided by Cal. Code Civ. Proc. § 703.140(b). On August 13, 2018, the debtor filed a spousal waiver that appears to be signed by the debtor and the debtor's spouse. As a result of the filing of the spousal waiver, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

16. 14-91361-D-13 RUBEN PAREDEZ
PLG-1

MOTION TO MODIFY PLAN
8-3-18 [28]

17. 18-90465-D-13 MARK/SHANNON CIMOLI
MDA-2

MOTION TO AVOID LIEN OF LOANME, INC.
8-22-18 [48]

Tentative ruling:

This is the debtors' motion to avoid a judicial lien. The court is not prepared to consider the motion because the proof of service states the moving papers were served on September 14, 2017, roughly nine months before this case was filed. If the moving parties' counsel brings to the hearing a corrected proof of service, fully executed and ready for filing, the court will hear the matter. In the alternative, if the debtors so request, the court will continue the hearing to allow a corrected proof of service to be filed. Otherwise, the motion will be denied.

18. 18-90465-D-13 MARK/SHANNON CIMOLI
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-13-18 [32]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. The objection was brought on the ground the debtors had claimed cash as exempt under an improper code section. On August 22, 2018, the debtors filed an amended Schedule C on which they claimed the cash as exempt under a different code section. As a result of the filing of the amended Schedule C, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

19. 17-90479-D-13 JOSEPHINE GOMEZ
NLL-1
CHAMPION MORTGAGE COMPANY
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-8-18 [86]

20. 17-90979-D-13 RKW-6 — RORY/SHAMEEMA STEVENS — MOTION TO MODIFY PLAN 8-16-18 [105]

21. 17-90087-D-13 BSH-2 — KEITH YEAMAN — MOTION TO MODIFY PLAN 7-26-18 [36]

Final ruling:

This is the debtor's motion to confirm a chapter 13 plan. The moving papers say nothing about the plan being an amended plan or a modified plan. The debtor has filed three different chapter 13 plans in this case, all titled simply "Chapter 13 Plan," with nothing in the title to distinguish them from one another. The proof of service refers only to a "Chapter 13 Plan," and thus, it does not evidence whether the plan served was the one filed July 23, 2018 or the one filed July 26, 2018 (or the original plan). The court pointed out this defect when it denied an earlier motion, and advised the debtor to file a corrected proof of service to clarify which plan was served. The debtor has not filed a corrected proof of service.

In addition, the debtor filed two different notices of hearing of this motion, one giving the hearing date as September 18, 2018 and the other, as September 25, 2018. But the titles of the two notices of hearing were the same: "Notice of Hearing on Motion to Confirm Chapter 13 Plan." Thus, the documents served on July 31, according to the proof of service filed that day, were exactly the same as the documents served on July 26, according to the proof of service filed that day, and there is insufficient evidence creditors were served with the notice of hearing giving the correct hearing date.

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

22. 18-90090-D-13 DJC-1 — CLIFFORD BARBERA — MOTION TO CONFIRM PLAN 7-23-18 [44]

Tentative ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The trustee and certain creditors have filed oppositions. For the following reason, the court intends to deny the motion.

The trustee points out that the plan proposes a 0% dividend on general unsecured claims estimated at a total of $165,182, whereas based on the trustee's review of the plan and the debtor's schedules, the plan should pay at least a 10% dividend. The trustee also objects on the ground that feasibility of the plan depends on the disallowance of certain claims as to which the debtor's objections are also on this calendar. As those objections will be either overruled or sustained only as to secured status, any plan, to be confirmable, would need to account for those claims (and others to which the debtor has objected) and address the uncertainty of the claims. That is, the plan would need to address each claim and propose to adjust the treatment of general unsecured claims depending on the outcome of litigation to resolve each claim. Because the currently proposed plan fails to include such an analysis and alternative treatment scheme, the court need not reach the other issues raised by the trustee and the creditors at this time.

The court will hear the matter.

23.	18-90090-D-13 DJC-2	CLIFFORD BARBERA	OBJECTION TO CLAIM OF DAMON BOWERS, CLAIM NUMBER 7 7-23-18 [49]

Tentative ruling:

This is the debtor's objection to the claim of Damon Bowers (the "claimant"), Claim No. 7 on the court's claims register. The claimant has filed opposition. For the following reasons, the objection will be sustained in part and overruled in part. In addition, the court will sua sponte lift the automatic stay so that litigation among the parties and others in state court may go forward, and will stay the adversary proceeding pending in this case, Adv. Proc. No. 18-9010, pending further order of this court.

When the debtor filed this case, on February 16, 2018, the debtor, his corporation - Priceless Kitchen & Bath ("Priceless"), the claimant and his spouse (the "Bowers"), and others were involved in litigation in Contra Costa County Superior Court. The litigation included two other claimants, Andrew and Melanie Chekene, whose claim the debtor has also objected to. In one lawsuit, the Bowers sued the debtor and Priceless; in the other, the Chekenes sued the debtor, Priceless, the claimant, and an entity called DB Capital Investments, Inc. ("DB Capital").[1] Both lawsuits involved complicated construction defect issues, arising out of the debtor's and/or Priceless' demolition of an existing structure and construction of a main residence and guest house in Alamo, California (the Bowers' action) and the debtor's and/or Priceless' remodel of another residence, also in Alamo (the Chekenes' action).[2] The claimant's claim filed in this case is for $727,017 and his spouse has filed a claim for the same amount. The Chekenes have filed a claim for $500,000.

The court does not know what happened in the state court actions except

that they had progressed to the point where the Bowers had sued Priceless and the debtor's son in Tuolumne County Superior Court alleging Priceless had fraudulently transferred certain real property in Sonora, California, to the debtor's son. In September of 2017, the parties to that lawsuit entered into a settlement agreement under which the debtor's son agreed to transfer the Sonora property to the debtor, and the debtor and Priceless agreed not to oppose the Bowers' application for a right to attach order against the Sonora property in the amount of $100,000, to be filed in the Bowers' Contra Costa County action. On September 14, 2017, the debtor's son signed a grant deed transferring the property to the debtor, and on September 18, 2017, the grant deed was recorded at the request of the state court attorney for the debtor, his son, and Priceless.

On December 11, 2017, the same attorney, as counsel for the same parties, signed a Notice of Non-Opposition to Amended Application for Writ of Attachment for filing in the Bowers' Contra Costa County action. The claimant posted an undertaking, and on January 8, 2018, the Contra Costa County Superior Court issued a Right to Attach Order and Order for Issuance of Writ of Attachment After Hearing. On February 1, 2018, the court issued a Writ of Attachment After Hearing. The debtor filed this case 16 days later.

Against the backdrop of that history and the teaching of Campbell [3] and Heath [4] regarding Fed. R. Bankr. P. 3001(f), the debtor's objection to claim stands in stark relief. The debtor would like this court to disallow the claim based solely on this testimony of the debtor: "a) I did not have a contract with Damon Bowers. Mr. Bower's contract was with Priceless Kitchen & Bath. Therefore, Mr. Bowers has no valid claim against me; b) There is no factual basis for a claim against me." Debtor's Decl., filed July 23, 2018, at 2:1-3.[5] The debtor does not state whether, in the two years the actions have been pending in Contra Costa County, he raised the first statement as a defense; if he did, what the claimant's response was and how the court ruled; and if he did not, why not. The statement does not indicate whether the contract was written or oral (the claimant testifies it was oral), and the debtor offers no evidence to corroborate his conclusory and self-serving version of the contract. Further, the statement fails to address the claimant's causes of action in the state court case for negligence, breach of express and implied warranties, and professional negligence. In short, the debtor's bare-bones statements provide grossly insufficient evidence to overcome the prima facie validity afforded the claim by Fed. R. Bankr. P. 3001(f). Accordingly, with the following limited exception, the objection will be overruled.

The debtor contends the claimant's assertion that the claim is secured by an interest in the debtor's property in Sonora (the property he acquired by grant deed from his son) is invalid as it is based on a notice of attachment recorded after the debtor commenced this case. The debtor is correct; thus, the objection will be sustained to the extent that the claim will be disallowed as a secured claim. The notice of attachment was recorded 12 days after the debtor commenced this chapter 13 case, and it was based on a writ of attachment issued in an action in which the debtor is a defendant

(the Bowers' Contra Costa County action). The recording was therefore in violation of the automatic stay of 11 U.S.C. § 362(a) and is void. Schwartz v. United States (In re Schwartz), 954 F.2d 569, 571 (9th Cir. 1992). The fact that the debtor's state court attorney signed a notice of non-opposition to the right to attach order and writ of attachment two months prior to the filing of this case is irrelevant to the question of the validity of the alleged lien, as is the fact that the debtor signed a settlement agreement in September of 2017 providing for the writ of attachment. It is also irrelevant that (1) the claimant recorded the notice of attachment "prior to Debtor filing a complete petition"; that is, before the debtor filed his schedules and statements; and (2) that the recording occurred before the Notice of Chapter 13 Bankruptcy Case was filed.

The automatic stay is just that – automatic; it takes effect immediately upon the filing of the petition. See § 362(a) (". . . a petition filed under . . . this title . . . operates as a stay . . . ."). And it takes effect whether or not the party who took action in violation of the stay was aware of the stay or of the bankruptcy filing at the time he or she took such action. Accordingly, the objection will be sustained in part and the claim will be disallowed as a secured claim. The claim will stand, without prejudice to a subsequent objection, as an unsecured claim.

The court will, sua sponte, lift the automatic stay to permit the parties to return to Contra Costa County Superior Court to conclude their litigation,[6] with the parties to return to this court for a determination of the issue of dischargeability, over which this court has exclusive jurisdiction,[7] in the event the claimant obtains a monetary award. The state court action involves issues of state law, not bankruptcy law. Further, there are other parties to the action over whom this court would have no jurisdiction. Trying the issues in this court as against the debtor only would be unnecessarily duplicative of the state court trial involving the other parties. Permitting the litigation to proceed in the state court will promote judicial efficiency and economy, allow for complete relief to be afforded the claimant against all defendants in a single forum, avoid unnecessary duplication of effort and expense, and avoid the possibility of inconsistent judgments. These interests outweigh any likely prejudice to the defendant from granting such relief. Thus, the court will lift the automatic stay with a limitation on enforcement of any monetary judgment against the defendant pending a determination of dischargeability by this court. The court will stay the adversary proceeding pending further order of this court.

The court will hear the matter.

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1 The debtor listed both lawsuits in his statement of financial affairs and listed the claimant on his Schedule H as his co-debtor on the Chekenes' claim.

2 It appears DB Capital is an entity related in some way to the claimant. After having had the residence remodeled by the debtor and/or Priceless, DB Capital sold it to the Chekenes; hence, the Chekenes' naming of the debtor, Priceless, DB Capital, and the claimant as defendants.

3 Campbell v. Verizon Wireless S-CA (In re Campbell), 336 B.R. 430, 434-36 (9th Cir. BAP 2005).

4 Heath v. Am. Express Travel Related Servs. Co. (In re Heath), at 331 B.R. 424, 435-37 (9th Cir. BAP 2005).

5 To the extent the second statement derives from the first, it adds nothing. To the extent the second statement is intended to stand on its own, it does not pass the test of LBR 3007-1(a), which provides, "A mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim."

6 The court has the power to lift the automatic stay sua sponte. Estate of Kempton v. Clark (In re Clark), 2014 Bankr. LEXIS 4633, *25, 26 (9th Cir. BAP 2014); In re Bellucci, 119 B.R. 763, 779 (Bankr. E.D. Cal. 1990).

7 Sasson v. Sokoloff (In re Sasson), 424 F.3d 864, 869 (9th Cir. 2005).

24.	18-90090-D-13 DJC-3	CLIFFORD BARBERA	OBJECTION TO CLAIM OF LISA BOWERS, CLAIM NUMBER 8 7-23-18 [54]

Tentative ruling:

This is the debtor's objection to the claim of Lisa Bowers (the "claimant"), Claim No. 8 on the court's claims register. The claimant has filed opposition. For the following reasons, the objection will be sustained in part and overruled in part. In addition, the court will sua sponte lift the automatic stay so that litigation among the parties and others in state court may go forward, and will stay the adversary proceeding pending in this case, Adv. Proc. No. 18-9010, pending further order of this court.

When the debtor filed this case, on February 16, 2018, the debtor, his corporation - Priceless Kitchen & Bath ("Priceless"), the claimant and her spouse (the "Bowers"), and others were involved in litigation in Contra Costa County Superior Court. The litigation included two other claimants, Andrew and Melanie Chekene, whose claim the debtor has also objected to. In one lawsuit, the Bowers sued the debtor and Priceless; in the other, the Chekenes sued the debtor, Priceless, the claimant's spouse, and an entity called DB Capital Investments, Inc. ("DB Capital").[1] Both lawsuits involved complicated construction defect issues, arising out of the debtor's and/or Priceless' demolition of an existing structure and construction of a main residence and guest house in Alamo, California (the Bowers' action) and the debtor's and/or Priceless' remodel of another residence, also in Alamo (the Chekenes' action).[2] The claimant's claim filed in this case is for $727,017 and her spouse has filed a claim for the same amount. The Chekenes have filed a claim for $500,000.

The court does not know what happened in the state court actions except that they had progressed to the point where the Bowers had sued Priceless and

the debtor's son in Tuolumne County Superior Court alleging Priceless had fraudulently transferred certain real property in Sonora, California to the debtor's son. In September of 2017, the parties to that lawsuit entered into a settlement agreement under which the debtor's son agreed to transfer the Sonora property to the debtor, and the debtor and Priceless agreed not to oppose the Bowers' application for a right to attach order against the Sonora property in the amount of $100,000, to be filed in the Bowers' Contra Costa County action. On September 14, 2017, the debtor's son signed a grant deed transferring the property to the debtor, and on September 18, 2017, the grant deed was recorded at the request of the state court attorney for the debtor, his son, and Priceless.

On December 11, 2017, the same attorney, as counsel for the same parties, signed a Notice of Non-Opposition to Amended Application for Writ of Attachment for filing in the Bowers' Contra Costa County action. The claimant's spouse posted an undertaking, and on January 8, 2018, the Contra Costa County Superior Court issued a Right to Attach Order and Order for Issuance of Writ of Attachment After Hearing. On February 1, 2018, the court issued a Writ of Attachment After Hearing. The debtor filed this case 16 days later.

Against the backdrop of that history and the teaching of Campbell [3] and Heath [4] regarding Fed. R. Bankr. P. 3001(f), the debtor's objection to claim stands in stark relief. The debtor would like this court to disallow the claim based solely on this testimony of the debtor: "a) I did not have a contract with Lisa Bowers. Mrs. Bower's contract was with Priceless Kitchen & Bath. Therefore, Mrs. Bowers has no valid claim against me; b) There is no factual basis for a claim against me." Debtor's Decl., filed July 23, 2018, at 2:1-3.[5] The debtor does not state whether, in the two years the actions have been pending in Contra Costa County, he raised the first statement as a defense; if he did, what the claimant's response was and how the court ruled; and if he did not, why not. The statement does not indicate whether the contract was written or oral (the claimant's spouse testifies it was oral), and the debtor offers no evidence to corroborate his conclusory and self-serving version of the contract. Further, the statement fails to address the claimant's causes of action in the state court case for negligence, breach of express and implied warranties, and professional negligence. In short, the debtor's bare-bones statements provide grossly insufficient evidence to overcome the prima facie validity afforded the claim by Fed. R. Bankr. P. 3001(f). Accordingly, with the following limited exception, the objection will be overruled.

The debtor contends the claimant's assertion that the claim is secured by an interest in the debtor's property in Sonora (the property he acquired by grant deed from his son) is invalid as it is based on a notice of attachment recorded after the debtor commenced this case. The debtor is correct; thus, the objection will be sustained to the extent that the claim will be disallowed as a secured claim. The notice of attachment was recorded 12 days after the debtor commenced this chapter 13 case, and it was based on a writ of attachment issued in an action in which the debtor is a defendant

(the Bowers' Contra Costa County action). The recording was therefore in violation of the automatic stay of 11 U.S.C. § 362(a) and is void. Schwartz v. United States (In re Schwartz), 954 F.2d 569, 571 (9th Cir. 1992). The fact that the debtor's state court attorney signed a notice of non-opposition to the right to attach order and writ of attachment two months prior to the filing of this case is irrelevant to the question of the validity of the alleged lien, as is the fact that the debtor signed a settlement agreement in September of 2017 providing for the writ of attachment. It is also irrelevant that (1) the claimant recorded the notice of attachment "prior to Debtor filing a complete petition"; that is, before the debtor filed his schedules and statements; and (2) that the recording occurred before the Notice of Chapter 13 Bankruptcy Case was filed.

The automatic stay is just that - automatic; it takes effect immediately upon the filing of the petition. See § 362(a) (". . . a petition filed under . . . this title . . . operates as a stay . . . ."). And it takes effect whether or not the party who took action in violation of the stay was aware of the stay or of the bankruptcy filing at the time he or she took such action. Accordingly, the objection will be sustained in part and the claim will be disallowed as a secured claim. The claim will stand, without prejudice to a subsequent objection, as an unsecured claim.

The court will, sua sponte, lift the automatic stay to permit the parties to return to Contra Costa County Superior Court to conclude their litigation,[6] with the parties to return to this court for a determination of the issue of dischargeability, over which this court has exclusive jurisdiction,[7] in the event the claimant obtains a monetary award. The state court action involves issues of state law, not bankruptcy law. Further, there are other parties to the action over whom this court would have no jurisdiction. Trying the issues in this court as against the debtor only would be unnecessarily duplicative of the state court trial involving the other parties. Permitting the litigation to proceed in the state court will promote judicial efficiency and economy, allow for complete relief to be afforded the claimant against all defendants in a single forum, avoid unnecessary duplication of effort and expense, and avoid the possibility of inconsistent judgments. These interests outweigh any likely prejudice to the defendant from granting such relief. Thus, the court will lift the automatic stay with a limitation on enforcement of any monetary judgment against the defendant pending a determination of dischargeability by this court. The court will stay the adversary proceeding pending further order of this court.

The court will hear the matter.

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1 The debtor listed both lawsuits in his statement of financial affairs and listed the claimant's spouse on his Schedule H as his co-debtor on the Chekenes' claim.

2 It appears DB Capital is an entity related in some way to the claimant's spouse. After having had the residence remodeled by the debtor and/or Priceless, DB Capital sold it to the Chekenes; hence, the Chekenes' naming of

the debtor, Priceless, DB Capital, and the claimant's spouse as defendants.

3 Campbell v. Verizon Wireless S-CA (In re Campbell), 336 B.R. 430, 434-36 (9th Cir. BAP 2005).

4 Heath v. Am. Express Travel Related Servs. Co. (In re Heath), at 331 B.R. 424, 435-37 (9th Cir. BAP 2005).

5 To the extent the second statement derives from the first, it adds nothing. To the extent the second statement is intended to stand on its own, it does not pass the test of LBR 3007-1(a), which provides, "A mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim."

6 The court has the power to lift the automatic stay sua sponte. Estate of Kempton v. Clark (In re Clark), 2014 Bankr. LEXIS 4633, *25, 26 (9th Cir. BAP 2014); In re Bellucci, 119 B.R. 763, 779 (Bankr. E.D. Cal. 1990).

7 Sasson v. Sokoloff (In re Sasson), 424 F.3d 864, 869 (9th Cir. 2005).

25.	18-90090-D-13 DJC-4	CLIFFORD BARBERA	OBJECTION TO CLAIM OF ANDREW AND MELANIE CHEKENE, CLAIM NUMBER 9 7-23-18 [59]

Tentative ruling:

This is the debtor's objection to the claim of Andrew Chekene and Melanie Chekene (the "claimants"), Claim No. 9 on the court's claims register. The objection will be overruled because the debtor served the claimants at the address on their proof of claim, but failed to also serve them at their different address listed on the debtor's Schedule E/F, as required by LBR 3007-1(c).

As a result of this service defect, the objection will be overruled by minute order. Alternatively, the court will continue the hearing to allow for the moving party to cure this service defect.

26.	18-90191-D-13 SSA-2	ROBERT GUZELL	MOTION TO CONFIRM PLAN 8-9-18 [40]

Final ruling:

This is the debtor's motion to confirm a first amended chapter 13 plan. On August 20, 2018, the debtor filed a second amended chapter 13 plan. As a result of the filing of the second amended plan, this motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

27. 18-90191-D-13 SSA-3 — ROBERT GUZELL — MOTION TO CONFIRM PLAN 8-20-18 [45]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

28. 18-90496-D-13 RDG-2 — RICHARD/NICOLE SOLANSKY — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-31-18 [19]

29. 18-90498-D-13 RDG-2 — DUSTY/MARGARET RHODES — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-31-18 [24]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

30. 18-90499-D-13 RDG-1 — SELINA FLORES — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-31-18 [18]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

31. 18-90506-D-13 RDG-1 — ROBIN HAMADE-GAMMON — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-31-18 [20]

32. 18-90506-D-13 BSH-1 — ROBIN HAMADE-GAMMON — MOTION TO VALUE COLLATERAL OF ONEMAIN
8-31-18 [27]

Tentative ruling:

This is the debtor's motion to value collateral of OneMain. The notice of hearing purports to require the filing of written opposition 14 days before the hearing date, but the moving party gave only 25 days' notice; thus, the court will entertain opposition, if any, at the hearing. In addition, the debtor's Schedule D indicates the debtor incurred the debt less than 910 days prior to the bankruptcy filing (in fact, less than one year); thus, the debtor should be prepared to inform the court whether OneMain holds a purchase money security interest in the vehicle, such that the hanging paragraph following § 1325(a)(9) applies. The attachments to OneMain's proof of claim do not include a purchase contract, so it appears OneMain's security interest is not a purchase money security interest. However, the loan agreement states, "I hereby grant Lender a security interest in the property identified [above], including a purchase money security interest if property is being purchased with the proceeds hereof."

The court will hear the matter.

33. 18-90507-D-13 RDG-1 — KELVIN LOVE — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
8-31-18 [17]

34. 17-90409-D-13 DCJ-6 — JOHNATHAN MOHR — MOTION TO VALUE COLLATERAL OF FRANCHISE TAX BOARD
9-10-18 [120]

Tentative ruling:

This is the debtor's motion to value collateral of the Franchise Tax Board (the "FTB"); namely, the equity in the debtor's residence over and above the amount due on the deed of trust. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has an initial concern.

The motion states that the FTB filed a state tax lien in Stanislaus County in December of 2015 and that the FTB has filed a proof of claim including a secured claim of $57,859. The debtor seeks to value the FTB's secured claim at $7,000, which is the amount of equity in the debtor's residence over and above the amount due on the deed of trust, as the debtor believed that amount to be when he filed his schedules. (As the debtor points out, the amount due on the deed of trust is,

according to the lienholder's proof of claim, higher than the amount the debtor had estimated.) In addition, the debtor's schedules disclose unencumbered value in personal property totaling in excess of $16,000, which the moving papers do not mention.

The court's concern is that tax liens are generally, if not always, created against the taxpayer's real and personal property at the same time, whereas the motion overlooks the debtor's personal property.

> **If any taxpayer or person fails to pay any liability imposed under Part 10 (commencing with Section 17001) [personal income tax] or Part 11 (commencing with Section 23001) at the time that it becomes due and payable, the amount thereof, (including any interest, additional amount, addition to tax, or penalty, together with any costs that may accrue in addition thereto) shall thereupon be a perfected and enforceable state tax lien.**

Cal. Rev. & Tax. Code § 19221(a) (emphasis added). Further, "[e]xcept as provided in subdivisions (b) and (c) [not applicable], a state tax lien attaches to all property and rights to property whether real or personal, tangible or intangible, including all after-acquired property and rights to property, belonging to the taxpayer and located in this state." Cal. Gov. Code § 7170(a) (emphasis added).[1]

The debtor will need to explain why this motion to value limits the FTB's collateral to his real property and does not include his personal property. The court will hear the matter.

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1 "[A]t any time after creation of a state tax lien," the taxing agency may record a notice of state tax lien with the county recorder of a county where the taxpayer owns real property and may file a notice of state tax lien with the Secretary of State. Cal. Gov. Code § 7171(a) and (b) (emphasis added). The recording and/or filing of a notice of state tax lien determines the priority of the lien in relation to purchasers of the taxpayer's property and holders of other liens. See Cal. Gov. Code § 7170(b) and (c). The court has found no authority for the proposition that the state tax lien depends for its creation on the recording or filing of a notice of state tax lien. Thus, even if the FTB did not record or file such a notice, it appears it has a lien against the debtor's real and personal property.

35. 18-90526-D-13 RDG-1 — CARRIE PHILLIPS — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-31-18 [18]

Final ruling:

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. On September 14, 2018, after the objection was filed, the debtor filed an amended plan and set it for hearing. As a result of the filing of the amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

36.	18-90528-D-13 RDG-1	ENRIQUE VILLALOBOS	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-31-18 [35]

Final ruling:

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. On September 5, 2018, after the objection was filed, the debtor filed an amended plan and set it for hearing. As a result of the filing of the amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

37.	18-90430-D-13 JAD-4	VINCENT COLMORE AND ABANEATHA BISBEE COLMORE	MOTION TO VALUE COLLATERAL OF GATEWAY ONE LENDING & FINANCE, LLC 9-4-18 [49]
38.	18-90430-D-13 JAD-5	VINCENT COLMORE AND ABANEATHA BISBEE COLMORE	MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL SERVICES, INC. 9-4-18 [54]
39.	18-90430-D-13 JAD-7	VINCENT COLMORE AND ABANEATHA BISBEE COLMORE	MOTION TO AVOID LIEN OF BH FINANCIAL SERVICES, INC. 9-4-18 [65]

40.	18-90084-D-13 DCJ-1	ALICIA VALADEZ	CONTINUED MOTION TO CONFIRM PLAN 7-19-18 [33]
41.	18-90190-D-13 BSH-1	CHARAE GILBERT	CONTINUED MOTION TO CONFIRM PLAN 7-23-18 [28]