UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

September 30, 2014 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. 13-90806-D-13 DAVID/MAELENA SMITH — MOTION TO CONFIRM PLAN
PLG-2 — 8-8-14 [101]

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. 14-91006-D-13 PATRICIA ALVAREZ — OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, N.A.
KK-1 — 8-20-14 [18]

3. 14-91006-D-13 PATRICIA ALVAREZ — MOTION TO VALUE COLLATERAL OF EMC MORTGAGE, LLC
TOG-1 — 8-20-14 [13]

4. 10-91213-D-13 GORDON/ANA LITTLE — MOTION TO TRANSFER REAL PROPERTY
CJY-1 — 8-29-14 [28]

5. 13-92116-D-13 DIANA ROCHA — OBJECTION TO CLAIM OF CEDARBROOK HOMEOWNERS, CLAIM NUMBER 7
CJY-2 — 8-11-14 [74]

Final ruling:

This is the debtor's objection to the claim of Cedarbrook Homeowners Association ("Cedarbrook"), Claim No. 7. Cedarbrook has not filed opposition. The court has examined the objection and the debtor's supporting declaration and exhibits, and concludes that the debtor has produced evidence sufficient to rebut the prima facie validity of the proof of claim. Accordingly, the objection will be sustained, and, as requested by the debtor, the claim will be disallowed in any amount in excess of $5,146.03.

The objection will be sustained by minute order. No appearance is necessary.

6. 13-92116-D-13 DIANA ROCHA — MOTION TO CONFIRM PLAN
CJY-3 — 8-11-14 [79]

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. 13-90824-D-13 JCK-2 — MATTHEW/CHARLENE GOMEZ — MOTION TO MODIFY PLAN 8-22-14 [37]

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.

8. 14-91024-D-13 DCJ-1 — SCOTT/CAROL BRADLEY — MOTION TO CONFIRM PLAN 8-19-14 [22]

9. 14-90628-D-13 RDG-1 — DAVID/KARYN GARCIA — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 6-16-14 [25]

10. 14-90628-D-13 SSA-1 — DAVID/KARYN GARCIA — OBJECTION TO CLAIM OF CREDITORS BUREAU, USA, CLAIM NUMBER 12 8-26-14 [41]

Tentative ruling:

This is the debtors' objection to the claim of Creditors Bureau USA, assignee for The Meat Market, Claim No. 12. The court is not prepared to consider the objection at this time because, although the debtors served Creditors Bureau USA at the address on its proof of claim, and also served The Meat Market at its address as listed on the debtors' schedules, both as required by LBR 3007-1(c), they failed to also serve Creditors Bureau USA at the address on its Request for Notice, filed and served on the debtors' counsel on August 5, 2014 (three weeks before the objection was served). The Request for Notice states that Creditors Bureau USA "requests for all purposes, the following address should be used: [address given]." The debtors

failed to serve Creditors Bureau USA at that address. Although service of the objection was in compliance with the court's local rule, the court must be satisfied that service was made in a manner "'reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" SEC v. Ross, 504 F.3d 1130, 1138 (9th Cir. 2007), quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). In the circumstances of this case, the court concludes that service on Creditors Bureau USA at the address in its Request for Notice was required.

As a result of this service defect, the objection will be overruled. In the alternative, the court will continue the hearing to allow the moving parties to file a notice of continued hearing and serve it, together with the objection and supporting declaration and exhibits, as outlined above. The court will hear the matter.

11.	14-90628-D-13 SSA-2	DAVID/KARYN GARCIA	OBJECTION TO CLAIM OF PENSKE TRUCK LEASING CO. LP, CLAIM NUMBER 11 8-26-14 [36]

12.	10-93231-D-13 HLG-1	MANUEL SENTEIO AND KIMBERLY ROWELL	MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A. 8-5-14 [35]

Final ruling:

This is the debtors' motion to value collateral of JPMorgan Chase Bank (the "Bank"), an FDIC-insured institution. The motion will be denied because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank by certified mail to the attention of an "Agent for Service of Process" at the address of a corporate agent for service of process. This was insufficient because the rule requires service to the attention of an officer, and only an officer, and not to the attention of an agent for service of process.

This distinction is important. Rule 7004(b)(3), which governs service on a corporation, partnership, or unincorporated association, provides that service must be addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process . . . ." If service addressed to an agent for service of process were sufficient for service on an FDIC-insured institution, Rule 7004(h) would be superfluous. To be sure, the preamble to Rule 7004(b) begins with the following: "Except as provided in subdivision (h) . . . ."

This method of attempted service was insufficient for the additional reason that service on an FDIC-insured institution must be to the attention of an officer, whereas it is unlikely an officer of the Bank is to be found at the location of a corporate agent for service of process.

The court notes also that a law firm filed a request for special notice on behalf of the Bank, and also signed the Bank's proof of claim in this case, in 2010; however, the moving parties failed to serve that law firm. Although the request for special notice states that it is not to be construed as a grant of authority from the Bank to the law firm to accept service of process on behalf of the Bank, the moving parties should nevertheless have served the law firm, in addition to serving the Bank in accordance with Rule 7004(h), as set forth above.

Finally, in the proof of service, the declarant states under penalty of perjury that she is a citizen of the United States, a resident of the Eastern District of California, over the age of 18, and not a party to this action. She does not attest under penalty of perjury to the facts of service, as required by 28 U.S.C. § 1746.

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

13.	13-91931-D-13 SSA-5	JERROD/GINA MELLO	CONTINUED MOTION TO MODIFY PLAN 7-10-14 [49]

14.	13-91931-D-13 SSA-6	JERROD/GINA MELLO	MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, DEBTORS' ATTORNEY 8-29-14 [68]

Tentative ruling:

This is the application of the debtors' counsel ("Counsel") for additional fees incurred in this chapter 13 case. The trustee opposes the motion on the ground that if the motion is granted, the debtors' proposed modified plan will not be feasible. For the following reasons, the motion will be granted in part.

The court notes, first, that the debtors have signed the application, indicating they agree the requested compensation is reasonable and should be paid. However, the court has an independent duty under § 330 of the Bankruptcy Code to review all requests for compensation and to determine their reasonableness. In re Eliapo, 298 B.R. 392, 405 (9th Cir. BAP 2003).

In this case, Counsel "opted in" to the "no-look" fee authorized in this district, as set forth in LBR 2016-1(c). At the time this case was filed, the maximum fee that could be charged as a no-look fee under that rule was $4,000 in non-business cases such as this one. Counsel initially agreed to a lower fee, $3,500. Counsel now seeks additional fees of $3,630 (and costs of $173.73) based on application of the lodestar formula for all services performed in the case thus far. The additional fees would bring Counsel's total fee for the case to $7,130.

The basis for the request is that after the debtors' plan was confirmed, Counsel was made aware of a judgment lien held by Westamerica Bank that had not been discovered pre-confirmation. In Counsel's view, as a result of the discovery of the lien, Counsel "performed significant and unexpected work, not contemplated by the original fee agreement" (S. Altman Decl., filed Aug. 29, 2014, at 3:5-6), including "investigation into the judgment and abstract and lien status" (id. at 3:7), preparation of a motion to value collateral and a motion to avoid the lien, preparation of a modified plan and a motion to confirm it, and court appearances at hearings on those motions.

The request for additional fees for those services is based on a misunderstanding of the "no-look" fee and LBR 2016-1. As pertinent here, the rule provides:

> **The fee permitted under this Subpart [the no-look fee] . . . is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation.**

LBR 2016-1(c)(3) (emphasis added). Counsel's position is that because he and the debtors were not aware of Westamerica's judgment lien before the plan was confirmed, the work required to avoid it was unanticipated, and thus, falls within the provision for additional compensation for "substantial and unanticipated post-confirmation work." The problem with this theory is that, if Counsel and the debtors had known of the judgment lien from the outset, a motion to avoid it would have been within the services normally performed toward confirmation of a plan, and thus, within the no-look fee. Indeed, Counsel prepared and filed a motion to value collateral – a second deed of trust on the debtors' property – prior to confirmation, and apparently viewed those services as covered by the no-look fee. (And in stark contrast to the fees now sought on account of the undiscovered judgment lien, the fees billed for the motion to value the second deed of trust totaled $325.) As the trustee pointed out in his opposition to the motion to confirm the modified plan, motions to avoid liens and motions to value collateral are included in this court's form Rights & Responsibilities (a copy of which was signed by the debtors and Counsel and filed with the court) as among the services a debtor's attorney agrees to perform.[1]

The court has examined Westamerica's judgment lien and the motion to avoid it: there is nothing about either that is extraordinary or even unusual. In fact, the motion is of the ordinary, garden-variety sort routinely filed in cases in this district. According to the motion, the amount due on the first deed of trust against the debtors' property was over $100,000 more than the value of the property; thus, there was no reason to expect Westamerica to oppose the motion, and it did not. The only reason the motion was not granted by final ruling in advance of the hearing was that the debtors had submitted a copy of Westamerica's abstract of judgment as recorded in Merced County, whereas the debtors' property is in Stanislaus County. The day before the hearing, the debtors filed supplemental evidence demonstrating that Westamerica had also recorded its abstract in Stanislaus County, and the motion was granted.

The court recognizes that this ruling may seem harsh in light of the significant amount of attorney's fees billed in response to the post-confirmation discovery of the judgment lien. However, of the services for which those fees were billed, the large majority appear to have been unnecessary. Several examples are readily apparent. First, Counsel billed $650 for 2.6 hours of attorney time for preparing a memorandum of points and authorities in support of the motion, which, given the garden-variety nature of the motion to avoid the lien, appears unnecessary and excessive. Second, Counsel and his paralegal spent 3.3 hours and billed $745 for remedying what should have been a simple problem to fix – the fact that the abstract of judgment filed with the motion was the one recorded in Merced County. Those services included preparing (and in the case of the paralegal, proofreading) lengthy declarations of the debtor and Counsel explaining how the mistake was made, and meetings with the debtors about the situation. A copy of the abstract as recorded in Stanislaus County was all that was needed; fees totaling $745 were simply incurred unnecessarily.

Third, for an unexplained reason, at the same time that Counsel prepared and filed the motion to avoid Westamerica's lien under § 522(f) of the Code, he also filed a motion to value Westamerica's collateral; that is, the collateral securing the judgment lien, under § 506(a). To be clear, Westamerica had just one lien against the property – the judgment lien. Both the motion to avoid lien and the motion to value collateral sought relief as to that lien only. Thus, the motion to avoid lien and the motion to value collateral were duplicative, and the latter was simply not necessary.

Fourth, the proposed modified plan was prepared solely for the purpose of including the additional fees Counsel is now seeking and increasing the debtors' plan payment to pay for them; thus, because the fees for avoiding the judgment lien should have been covered by the initial fee, the fees for the modified plan and the motion to confirm it were incurred unnecessarily. Finally, the time spent responding to the trustee's opposition to that motion was unnecessary, as the only basis for the opposition was the trustee's position that the request for additional attorney's fees included in the plan (the fees for which approval is sought here) was unfounded. In short, the modified plan, the motion to confirm it, and this motion for additional fees, which itself generated $725 in fees, appear unnecessary and excessive.

To conclude, the services incurred by Counsel in dealing with Westamerica's lien, while unanticipated prior to confirmation of the plan, would have been covered by the no-look fee had they been anticipated and performed prior to confirmation.[2] The fortuitous fact that Counsel and the debtors learned about the lien post-confirmation is simply not sufficient to justify an award of additional fees for avoiding the lien or for all that flowed from it, including the motion to modify the plan and the motion for additional fees.

Having said that, the court recognizes that Counsel initially charged less than the maximum that might have been charged for this case as a no-look fee. The court is prepared to accept that if Counsel had been aware of the need for the motion to avoid Westamerica's lien at the outset of the case, he would have charged the maximum allowed fee. Thus, the court will award Counsel the difference between that maximum fee ($4,000) and the amount he charged ($3,500), $500, plus the additional costs requested, $173.73, for a total of $673.73. As to the balance of the fees requested, the motion will be denied.

The court will hear the matter.

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1 Counsel attempted in his Rule 2016(b) statement to "carve out" lien avoidance motions (except motions to avoid judicial liens against household goods) from the services to be covered by his initial fee. However, the local rule does not give an attorney who opts in to the no-look fee the prerogative to exclude from that fee services that, absent unusual unanticipated circumstances, are covered by it.

2 The court notes that the total amount of fees incurred prior to confirmation, if computed on a lodestar basis, was $2,300.50. Thus, it cannot be argued that the no-look fee Counsel agreed to, $3,500, was not sufficient to fairly compensate him for those services.

15.	14-90433-D-13 DCJ-2	AMARPAL DOSANJH	MOTION TO CONFIRM PLAN 8-19-14 [59]

16.	11-93636-D-13 JCK-4	ALENE WILLIAMS	MOTION TO MODIFY PLAN 8-14-14 [69]

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.

17.	14-90938-D-13 JDP-1	CLIFFORD PIKE AND LAURENE FLOHR-PIKE	CONTINUED MOTION TO VALUE COLLATERAL OF USAA FEDERAL SAVINGS BANK 7-8-14 [8]

Tentative ruling:

This is the debtors' motion to value collateral of USAA Federal Savings Bank (the "Bank"), a second position deed of trust against the debtors' residence, at $0. The Bank filed opposition, and the hearing has been continued to allow the parties to submit additional evidence, which they have done. For the following reasons, the motion will be granted.

There is a deed of trust on the property that is senior to the Bank's deed of trust; according to the debtors, the senior lien secures a claim in the amount of $275,047. No contrary evidence has been presented, and none appears in the record in this case. Thus, if the court determines the value of the property to be no more than $275,047, the debtors are entitled to value the Bank's secured claim at $0. On

the other hand, if the court determines the value of the property to be more than $275,047, the debtors are not entitled to value the Bank's claim under § 506(a) of the Bankruptcy Code at any amount less than the full amount due.

The debtors have submitted the declaration of appraiser Gary Lev, together with a copy of his appraisal, as evidence that the value of the property is $270,000. The Bank has submitted the declaration of Elias Valencia, together with a copy of his appraisal, as evidence that the value of the property is $278,000. Thus, the appraisals are only $8,000 apart.

Mr. Lev testifies that he has been a licensed appraiser in California since 2001, that he is actively employed as such, and that he performs approximately 40 appraisals per month, primarily of properties in Stanislaus County. (The debtors' property is in Hughson, in Stanislaus County.) Mr. Valencia testifies that he has more than 11 years of experience in appraising properties. Thus, it appears Mr. Lev has a couple of years more experience than Mr. Valencia. However, as no further details are provided as to either appraiser's background or experience, the court concludes that the qualifications of the two appraisers to render an opinion of the value of the property are similar.

Mr. Lev selected three comparable properties, each within three-quarters of a mile of the debtors' property; the three sold in March, January, and May of 2014, respectively. The prices of Mr. Lev's comparables, as adjusted to account for differences between them and the debtors' property, were $276,750, $249,850, and $271,680. Mr. Valencia relied on four sales comparables, each within one-half mile of the debtors' property. Three of those sold in August 2014; the fourth was the same property as Mr. Lev's comparable that sold in March 2014. The prices of Mr. Valencia's sales comparables, as adjusted, were $294,500, $290,000, $276,500, and $278,000.

Mr. Lev has cited what he considers to be several reasons for according less weight to Mr. Valencia's appraisal. The court agrees as to at least one point, but disagrees as to others. First, Mr. Lev notes that Mr. Valencia's office is in Tracy, in San Joaquin County. Mr. Lev states: "In my experience, real estate valuations are hyper local[,] and an appraiser who lives and works regularly in the same county where they conduct appraisals will put forth more accurate valuations[,] as they are more familiar with the area." G. Lev Decl., filed Sept. 18, 2014 ("Decl."), at 2:13-16. However, because Stanislaus and San Joaquin Counties are very near each other – in fact, they share a long border; because the debtors' property in Hughson is just 41 miles by car from Mr. Valencia's office in Tracy; and because Tracy and Hughson are both in the same geographical area – California's Central Valley, the court finds that Mr. Lev's general opinion provides an insufficient basis on which to conclude that Mr. Valencia is less qualified to value the property than Mr. Lev.

Next, Mr. Lev takes issue with Mr. Valencia's use of his Comparable # 1 as being (1) brand new, whereas the debtors' house is 11 years old; and (2) 23% larger than the debtors' house. Mr. Lev incorrectly states that no adjustments were made by Mr. Valencia for either of those factors. In fact, Mr. Valencia <u>did</u> take the age difference into account, although he categorized it as an adjustment for condition rather than age. In his appraisal, Mr. Valencia stated: "Comparable #1 is a new construction and was only adjusted for condition" (Bank's Ex. 1, at p. 13 of 29) and "Comp #1 is adjusted for concessions and superior condition (new construction)." <u>Id.</u> In fact, Mr. Valencia adjusted the price of his Comp # 1 downward by $35,000 on account of this difference in condition. Further, Mr. Valencia <u>did</u> adjust the sales

price of his Comp # 1 – downward by an additional $20,000 – on account of the difference in the gross living area.[1]

Although Mr. Valencia in fact made adjustments for the factors Mr. Lev claims he did not, the amounts of those adjustments were so significant (a net and gross adjustment of 16.3%) that the comparable is not very reliable for this analysis. Further, the court agrees with Mr. Lev that Mr. Valencia's Comps # 5 and 6, as listings not sales, should have been adjusted accordingly, and they were not. Thus, the court gives little, if any, weight to those two comparables.

That leaves Mr. Valencia's Comps # 2, 3, and 4. As to Comp # 2, Mr. Lev believes an adjustment should have been made for design and condition. The property has a two-story house, as opposed to the debtors' one-story ranch, and Mr. Lev believes its design and construction materials are superior to the debtors' home. He concludes the adjusted price of Comp # 2 "should have been at least 5% lower than what was listed by Creditor [Mr. Valencia]." Decl. at 3:5-6. Making that additional adjustment, however, would bring the adjusted price down to $275,500, not a sizeable difference.

Mr. Valencia stated in his appraisal that he gave the most weight among his six comparables to Comps # 3 and 4 due to gross living area, design, and appeal. Mr. Lev has no complaints about Mr. Valencia's Comp # 3; in fact, it is one of the three comparables Mr. Lev used. That property is 0.11 miles from the debtors' property, is 10 years old, and has a house of the same square footage as the debtors'. In fact, of all comparables used in both appraisals, this is the one most similar to the debtors' property. Both appraisers adjusted the price of this comparable for lot size and financing concessions, and arrived at adjusted prices of $276,500 (Mr. Valencia) and $276,750 (Mr. Lev).

Finally, Mr. Lev discounts the accuracy of Mr. Valencia's adjusted price for his Comp # 4 because Mr. Valencia did not account for the fact that the property, unlike the debtors' property, is not near a park. Based on the observation that parks can be noisy, Mr. Lev would adjust the price downward by $7,500. Based on the limited information provided about the reasons for this proposed additional adjustment, the court is not prepared to determine the effect of that factor one way or the other.

To conclude, the court finds Mr. Lev and Mr. Valencia to be equally qualified to render an opinion of value as to the debtors' property, and finds that their respective opinions are generally well reasoned and based on reliable comparable sales appropriately adjusted. Accordingly, the court concludes that the value of the property is the midway point between their two valuations, $274,000. As that figure is less than the amount due on the senior lien, the court concludes there is no value in the property to secure the Bank's second, and the motion will be granted.

The court will hear the matter.

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1 Mr. Valencia noted in his appraisal that his Comp # 1 is more than 20% larger than the subject property, but stated "it was included due to the lack of sales with similar lot size." Bank's Ex. 1, at p. 13 of 29. (All of Mr. Lev's comps are significantly smaller in lot size than the debtors' property, as are three of Mr. Valencia's four sales comparables.)

18. 14-90939-D-13 MGW-1 — DANIEL MITCHELL — MOTION TO DISMISS CASE 8-30-14 [27]

Final ruling:

The hearing on this matter has been continued by stipulation of the moving party and the debtor filed September 10, 2014 to October 14, 2014, at 10:00 a.m. No appearance is necessary on September 30, 2014.

19. 14-90845-D-13 SAC-1 — NORA AMBRIZ AND ALEJANDRO ORDONEZ — CONTINUED MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. AND/OR MOTION FOR MODIFICATION OF RIGHTS OF LIENHOLDER WELLS FARGO BANK, N.A. 8-4-14 [26]

Tentative ruling:

This is the debtors' motion to value their rental property located at 2405 Gutherie Street, Modesto, California, at $106,714, for purposes of valuing (1) the Bank's claim secured by a first position deed of trust at $106,714, and (2) the Bank's claim secured by a second position deed of trust at $0. The Bank has filed opposition and the debtors have filed a reply. The Bank does not dispute that the value of the property is less than the amount secured by the Bank's senior lien; thus, as to the junior lien, the motion will be granted, and the amount of the Bank's claim secured by the second position deed of trust will be set at $0.00. As to the senior lien, the Bank opposes the motion. For the following reasons, as to that lien, the motion will be granted in part.

As to the amount secured by the first position deed of trust, the debtors have supported their motion with their own declaration, in which they cite an eppraisal.com appraisal which they have filed as an exhibit, and which they contend shows the fair market value of the property to be approximately $106,714. They add, "We believe said FMV to be correct based on our knowledge of the Property and other properties in the surrounding neighborhood." Debtors' Declaration, filed Aug. 4, 2014, at 2:19-21. The exhibit purports to be a copy of a page printed on July 19, 2014 from eppraisal.com. It appears, however, to be an incomplete copy, with a portion of the printout having been "whited out" by the debtors or their counsel, which calls into question the reliability of the eppraisal evidence, and hence, of the debtors' opinion of value.

The court takes judicial notice of the fact that the eppraisal.com information that appears on the screen when one performs an eppraisal.com search is similar to the version the debtors have filed as an exhibit except that it contains a zillow.com value, $138,070, immediately below the eppraisal value, $106,714.[1] It appears that the zillow.com value has been whited out on the version filed as an exhibit. The debtors have not disclosed that they whited out this higher value. The court has no reason to believe the debtors have the qualifications necessary to select one value as more credible than the other, or to evaluate the neighboring properties they refer to in their declaration. As a result, the court gives little, if any, weight to the debtors' evidence of value. The debtors' reply contains

further remarks regarding the eppraisal valuation, which the court will discuss below.

The Bank, on the other hand, has submitted the declaration of Garen M. Rishard, a licensed real estate appraiser, together with a copy of his appraisal, as evidence that the value of the property as of the petition date, June 11, 2014, was $160,000. Thus, the Bank requests that the motion be denied, or in the alternative, that the value of the property be set at $160,000. Mr. Rishard testifies he has performed more than 1,000 residential real property appraisals in California. His appraisal in this case includes an analysis of the debtors' property in light of four sales of comparable properties located less than one mile from the debtors' property; two of those sales closed in May of 2014, one in March of 2014, and the other in January of 2014. Based on his qualifications and experience, and on the level of detail in his appraisal, the court gives considerably more weight to Mr. Rishard's opinion of value than to the debtors'. Accordingly, the court will grant the motion in part, and the amount of the Bank's claim secured by its first position deed of trust will be set at $160,000.

The arguments raised in the debtors' reply to the Bank's opposition border on the spurious. First, the debtors claim the eppraisal valuation is more reliable than Mr. Rishard's appraisal because (1) the eppraisal report includes two homes on the same street as the debtors' property, Gutherie Street, that sold for less than $100,000, whereas Mr. Rishard did not use as a comparable any properties on Gutherie Street; and (2) the eppraisal report includes a figure for the average sold price of a four-bedroom home in the same zip code as the debtors' property, $124,418, which, the debtors point out, must reflect a number of properties sold for significantly less. Because none of the homes eppraisal.com selected as "nearby" the debtors' was valued at greater than $126,435, the debtors reason that the eppraisal value of their property, $106,714, is in line with values in the neighborhood.

First, the eppraisal report shows that the two homes on Gutherie Street sold over three years ago and four years ago, respectively. For purposes of valuing the debtors' property today, the sales prices of those homes are of no use whatsoever. Second, as against an experienced appraiser's reliance on what he considers to be properties comparable to the debtors', with appropriate adjustments for differences, the court gives little, if any, weight to the average sales price of the four-bedroom homes in the same zip code in an unspecified period of time.

Finally, the court dismisses the attack on Mr. Rishard's impartiality as speculation and grandstanding.

The court will hear the matter.

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1 See http://www.eppraisal.com/home-values/property/2405-gutherie-st-modesto-ca-95358-18478054/ (last visited Sept. 25, 2014).

20. 13-92146-D-13 AMANDO/ZENAIDA AMADOR — MOTION TO VALUE COLLATERAL OF CITIBANK, N.A.
BSH-1 — 8-27-14 [18]

Final ruling:

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

21. 14-90447-D-13 ALEX/DIANE GRIEGO — MOTION TO CONFIRM PLAN
RS-2 — 8-15-14 [41]

Final ruling:

This case was dismissed on August 18, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

22. 11-92450-D-13 ANNETTE MYLES — MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
CJY-1 — 8-20-14 [63]

Final ruling:

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

23. 09-93154-D-13 BRAD/SUSAN LASH — OBJECTION TO CLAIM OF JP MORGAN CHASE BANK, N.A., CLAIM NUMBER 13-1
CWC-4 — 8-15-14 [124]

Tentative ruling:

This is the debtors' objection to the proof of claim filed by JPMorgan Chase Bank, N.A. ("Chase"), Claim No. 13 on the court's claims register. No opposition has been filed; however, for the following reason, the court is not prepared to sustain the objection at this time. Although the debtors served Chase at the address on its filed proof of claim, as required by LBR 3007-1(c), they failed to also serve it at the different address listed on the debtors' Schedule F, as required by the same rule. The court intends to continue the hearing to allow the debtors to file a notice of continued hearing and serve it, together with the objection and supporting documents, on Chase at the address on Schedule F. The court will hear the matter.

24. 14-90456-D-13 EDWARD/ANGELA SPEAR MOTION TO CONFIRM PLAN
RLF-1 8-13-14 [32]

25. 11-90266-D-13 JOHNNY/TAMARA MATTHEWS MOTION TO CONFIRM PLAN
DCJ-4 8-19-14 [315]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties failed to serve Kaiser Permanente and Sutter Gould Medical Foundation, listed on their Schedule F; thus, they failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b); and (2) the plan provides for the secured claim of U.S. Bank for America's Servicing Company at less than the full amount of the claim, whereas the debtors have failed to obtain an order valuing the collateral securing the claim, as required by LBR 3015-1(j). For the reasons stated, the motion will be denied by minute order, and the court need not reach the issues raised by the trustee, U.S. Bank, and Northeast Bank at this time. The motion will be denied by minute order. No appearance is necessary.

26. 14-91070-D-13 HARVEY/KIMIKO HENDRIX MOTION TO AVOID LIEN OF
SJS-1 AMERICAN EXPRESS BANK, FSB
8-19-14 [11]

Tentative ruling:

This is the debtors' motion to avoid a judicial lien held by American Express Bank, FSB (the "Bank"). For the following reason, the motion will be granted in part, and the lien will be avoided only to the extent it secures $731 of the obligation of debtor Harvey D. Hendrix, Jr., on the judgment. The lien will not be avoided as to the balance of the amount secured by the lien, $25,117.

Specifically, except as to the amount of $731, the evidence does not demonstrate that the lien impairs an exemption of the debtors, as required by § 522(f)(1)(A) of the Bankruptcy Code for the avoidance of a judicial lien. The lien is in the amount of $25,848. In their supporting declaration, the debtors state that the value of the property was $300,000 at the time the case was filed, and that there is a deed of trust against the property on which $264,883 is owed. The debtors have claimed an exemption of $10,000 in the property.

Deducting the amount due on the deed of trust and the amount of the debtors' exemption from the value of the property leaves $25,117 in equity in the property to support the judicial lien the debtors seek to avoid. Viewed another way, applying

the formula set forth in § 522(f)(2)(A), the total of the judicial lien, $25,848, the amount owed on the deed of trust, $264,883, and the amount of the debtors' exemption, $10,000, is $300,731. A judicial lien is considered to impair an exemption only to the extent that this total amount exceeds the value the debtors' interest in the property would have in the absence of any liens; in this case, that value is $300,000. The total of the judicial lien, the mortgage lien, and the exemption exceeds the value of the property by only $731; thus, the judicial lien impairs the exemption only to that extent. As to the balance of the amount secured by the judicial lien, $25,117, the lien does not impair the exemption, and the lien, to the extent of $25,117, will remain attached to the property.

The court will hear the matter.

27. 14-90477-D-13 SJS-4 — BONI CORDOVA-GRIMALDI — MOTION TO CONFIRM PLAN 8-8-14 [55]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the "attached service list" referred to in the proof of service is not attached. Thus, the court cannot determine whether all creditors were served, as required by Fed. R. Bankr. P. 2002(b), or whether they were served at the correct addresses, as required by Fed. R. Bankr. P. 2002(g). As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

28. 09-92580-D-13 CJY-1 — JOHN/SHARON GROSSI — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 8-25-14 [64]

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.

29. 14-91188-D-13 ALF-1 — STEVEN HUFFMAN — MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE 8-28-14 [8]

Final ruling:

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

30. 14-91188-D-13 ALF-2 — STEVEN HUFFMAN — MOTION TO VALUE COLLATERAL OF FRANCHISE TAX BOARD 8-28-14 [13]

Final ruling:

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

31. 10-93895-D-13 PLG-1 — DAVID/NICOLE CHAPMAN — MOTION TO SELL 8-28-14 [38]

32. 14-90696-D-13 BG-2 — JAVIER MORENO — MOTION TO CONFIRM PLAN 8-6-14 [60]

33. 14-91034-D-13 RDG-1 — THOMAS/RENEE SMITH — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-5-14 [15]

34. 14-90938-D-13 MRG-1 — CLIFFORD PIKE AND LAURENE FLOHR-PIKE — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY USAA FEDERAL SAVINGS BANK
7-29-14 [20]

35. 12-91549-D-13 RLS-4 — ALAN/BONNIE STOKES — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO SELL
ALAN STOKES VS.
9-12-14 [132]

Tentative ruling:

This is the debtors' motion for an order approving a short sale of real property. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, ordinarily, the court would entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The court intends to deny the motion because the moving parties served only the trustee, the United States Trustee, the proposed purchaser, a real estate firm, a title company, and one secured creditor. Thus, the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(2). In the alternative, the court will continue the hearing and require the moving parties to file a notice of continued hearing and serve it, together with the motion and supporting documents (or the notice of continued hearing only, if it complies with LBR 9014-1(d)(4)), in sufficient time to give at least 21 days' notice of the continued hearing, as required by Fed. R. Bankr. P. 2002(a)(2). In the event the moving parties elect to file and serve a notice of continued hearing, they should be careful to serve all creditors at the addresses required, in accordance with Fed. R. Bankr. P. 2002(g)(1) and (2), and to serve the several creditors who have requested special notice in this case at their designated addresses, as required by the same rule.

The court will hear the matter.

36. 09-92050-D-13 CJY-1 — PATRICK/KIMBERLY MCLOUD — MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE, MOTION TO EXCUSE DEBTOR PATRICK L. MCLOUD FROM COMPLETING SECTION 1328 CERTIFICATE OR CERTIFICATE OF CHAPTER 13 DEBTOR RE: SECTION 522(Q) EXEMPTIONS
9-11-14 [68]

37.	11-90693-D-13 TOG-2	GABRIEL RAMIREZ AND ERNESTINA ORNELAS	CONTINUED MOTION TO MODIFY PLAN 7-25-14 [39]