

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

November 5, 2013 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order."

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	13-90202-D-13	ERIC/TINA HANSEN	MOTION TO MODIFY PLAN
	CJY-1		9-25-13 [49]

Tentative ruling:

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

The debtors' present confirmed plan was based on debtor Tina Hansen's employment as a substitute teacher making \$1,169 per month net. She has since obtained full-time employment as a teacher, and makes \$2,825 per month net, an increase of \$1,656. The debtors have not increased any of their expenses over the figures shown on their original schedules, filed January 31, 2013; however, they have added \$50 for pest control, \$100 for orthodontia services for their son, and \$250 for a house cleaning service. The trustee objected to the latter of these, the house cleaning service, as not being reasonably necessary.

The debtors have filed a reply declaration in which they provide virtually an hour-by-hour accounting of their days, so as to justify the house cleaning expense.

They emphasize Tina Hansen's multiple time-consuming responsibilities as a teacher, Eric Hansen's employment on a graveyard shift, both debtors' numerous household responsibilities, and their many leisure and health-related activities, including their children's sports activities, family gatherings, and walking an hour a day. They add that their whole family suffers from allergies, and posit that if they are not allowed the house cleaning expense, "[their] family will undergo tremendous health issues, stress, and be faced with living in squalor that would drive [them] to question whether having Tina working is really worth it at the expense of [their] family." Debtors' declaration, filed October 11, 2013, at 3:19-22.

The court is not at all convinced the house cleaning expense is either necessary or reasonable, especially in a situation such as this, where the debtors are in a chapter 13 case and the expense would be paid essentially by their unsecured creditors, who hold claims totaling \$112,164, plus a \$46,133 second deed of trust the debtors have "stripped off" their residence. There appears to the court no good reason the debtors could not carve out sufficient time to do their own house cleaning from their children's apparently extensive sports and school activities, all of which the debtors apparently attend, including two hours every Saturday, from Eric Hansen's own weekly softball league, from the many birthday parties and other events they attend with extended family, and from the hour per day the debtors try to spend walking. These activities are really luxuries that, to the extent they deprive the debtors of the time needed to clean their home, should not come at the expense of creditors. Most of the other activities the debtors describe as precluding them from doing their own housekeeping are those most families handle without professional house cleaning assistance - cooking, cleaning up, shopping, helping children with homework, doing yard work, taking care of a pool, paying bills, scheduling medical and other appointments, and so on. In short, the court simply does not accept the conclusion that the absence of a house cleaning service would reduce the debtors' family to living in "squalor;" and if it did in fact result in the debtors living in "squalor," the situation would be wholly self-inflicted from the debtors' unwillingness, or refusal, to clean their own home. The court also is not convinced the absence of a professional house cleaning service in the debtors' home would cause their family "tremendous health issues" or stress. The court concludes this expense is not reasonable and necessary, and the debtors have failed to satisfy their burden to demonstrate that the plan has been proposed in good faith.

The court will hear the matter.

2. 13-91305-D-13 DANIEL VITELA MORALES AND MOTION TO DISMISS CASE
JODI VITELA 9-27-13 [30]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to dismiss case is supported by the record. As such the court will grant the motion and dismiss the case by minute order. No appearance is necessary.

3. 10-92209-D-13 JEFFREY/DEVONNE MOTION TO MODIFY PLAN
CJY-2 GREENHALGH 9-25-13 [42]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

4. 13-90809-D-13 HAL SMULSON MOTION TO CONFIRM PLAN
SSA-7 9-18-13 [91]

Final ruling:

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

5. 10-91810-D-13 DAVIN/JAMI DAVINI MOTION TO VALUE COLLATERAL OF
JDP-1 JP MORGAN, N.A.
9-18-13 [62]

Final ruling:

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

6. 13-91612-D-13 DEBRA MCCONNICO MOTION TO VALUE COLLATERAL OF
JAD-1 NATIONSTAR MORTGAGE, LLC
9-17-13 [10]

Final ruling:

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

7. 10-91820-D-13 ALBERT/WINFRED VALLEJOS MOTION TO MODIFY PLAN
CJY-5 9-30-13 [74]

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. 13-90620-D-13 ALFREDO VELASQUEZ MOTION TO CONFIRM PLAN
PGM-4 (DISMISSED) AND ANGELICA 9-17-13 [86]

Final 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 the creditor that filed Claim Nos. 7 and 8, by far the largest unsecured claims filed in the case, at the address on its proofs of claim, as required by Fed. R. Bankr. P. 2002(g). As a result of this service defect, the motion will be denied, and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

9. 10-93121-D-13 STEVEN/LYNNE SALE MOTION TO VALUE COLLATERAL OF
JDP-1 WELLS FARGO BANK, N.A.
10-1-13 [41]

Final ruling:

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

10. 13-90327-D-13 TORIBIO TORRES AND MOTION TO VALUE COLLATERAL OF
TOG-5 BEATRIZ ROCHEL POINTS WEST FINANCIAL GROUP
SPE, LLC
10-7-13 [101]

Tentative ruling:

This is the debtors' motion to value collateral of Points West Financial Group SPE, LLC ("Points West"), consisting of a first position deed of trust against the debtors' real property commonly known as 1513 Swalls Lane, Modesto, California. Points West has filed opposition. 1

This case was filed February 25, 2013; this is the debtors' second motion to value the collateral of Points West. The first motion was denied by minute order dated June 26, 2013, based on a detailed ruling that appears in the court's civil

minutes for June 25, 2013. The court concluded at that time that the debtors had failed to meet their burden of demonstrating that the property is a rental property, such that the debtors may "strip down" the amount of a first position deed of trust, and had also failed to meet their burden of establishing the value of the property. The court noted in that ruling that although debtor Toribio Torres had testified in support of the motion that the property was a rental property, and had provided a copy of a rental agreement, that evidence was undermined by the fact that in their statement of financial affairs, signed by the debtors under oath, the debtors were required to disclose all income they had received in the two years prior to the commencement of the case from all sources, yet the debtors had disclosed only wage, disability, and social security income, and no rental income. Given this conflicting evidence, the court was unable to conclude the property in question is a rental property of the debtors.

Three and one-half months after the court issued that ruling, the debtors filed this motion. In the interim, they did not file an amended statement of financial affairs, and did not mention the issue in the motion or supporting declaration. It was not until ten days later, on October 17, 2013, that the debtors finally filed an amended statement of financial affairs, in which they listed rental income of \$14,400 in 2012 and \$10,800 for January through September 2013.² This was information that should have been listed on the debtors' original statement of financial affairs, but was not disclosed until almost eight months into the case. In these circumstances, the court would likely be unable to conclude that the debtors have complied with their duty of "careful, complete, and accurate reporting in [their] schedules"³ and statements filed in this case.

Nevertheless, Points West has offered no legal theory or authority to support its conclusion that the debtors "are bound by the admissions in their Schedules and supporting documents," and thus, "cannot controvert their representations" in the original statement of financial affairs that they had no rental income during the two years preceding the commencement of the case.⁴ Thus, the court accepts the testimony of the amended statement of affairs, which indicates the debtors had rental income both before and after the filing of this case. Thus, the property, which is the debtors' only real property apart from their residence, was a rental property when the case was filed, and the debtors may value the first position deed of trust under § 506(a).

Turning, then, to the value of the property, the debtors have submitted a declaration of appraiser John Friend, and a copy of his appraisal, valuing the property at \$53,000 as of August 5, 2013, several months after this case was commenced. (Neither party has briefed the issue of the date as of which value is to be determined.) In response, Points West has submitted a declaration of a vice-president and custodian of records, who testifies that based on his review of those records, a broker's price opinion ("BPO") dated May 31, 2013 determined the market value of the property to be \$68,000. Points West has filed a copy of the BPO as an exhibit. The vice-president's testimony is sufficient to authenticate only the fact that the BPO appears in Points West's business records, not that the value determined by the BPO is accurate. In fact, the BPO is hearsay. Thus, Points West has submitted no admissible evidence to counter the admissible evidence submitted by the debtors by way of Mr. Friend's declaration and appraisal. As the debtors control and have from the outset of the case controlled the timing of their motions to value, and thus, have had more opportunity than Points West to obtain admissible evidence, the court will hear the matter to determine whether Points West wants additional time to supplement the record. If not, the motion will be granted.

The court will hear the matter.

1 For future reference, the parties' counsel are advised to consider the following. First, the debtors' counsel routinely files with all his motions to value a one-page document entitled "Points and Authorities in Support of Motion to Value Collateral." The document does not contain a signature block or a signature; thus, it does not comply with LBR 9004-1(c). The debtors' counsel is requested to cease filing this document in all cases, unless it is corrected to include an appropriate signature.

Points West's counsel is cautioned to review the court's local rules, especially LBR 9014-1, and Revised Guidelines for the Preparation of Documents, Form EDC 2-901, which require that documents filed with a motion or an opposition be filed separately, rather than as a single document. Here, Points West filed its opposition, supporting declaration, exhibits, and proofs of service as a single document.

2 It appears likely the statement of financial affairs continues to be incomplete. The question expressly calls for all income received during the two years preceding the filing; in this case, all income between February 25, 2011 and February 25, 2013. The debtors listed no rental income in 2011, yet Mr. Torres' declaration supporting the earlier motion to value stated that their then tenant, Martina Perez, began renting the property on September 28, 2010.

3 See Hickman v. Hana (In re Hickman), 384 B.R. 832, 841 (9th Cir. BAP 2008), citing Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 417 (9th Cir. BAP 2007).

4 Opposition to Motion to Value Collateral, filed Oct. 22, 2013, at 3:27-4:1.

11. 11-93132-D-13 JESSE/SUSAN MIRELES MOTION TO MODIFY PLAN
CJY-1 9-19-13 [30]

Final ruling:

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

12. 13-91633-D-13 DAVID/CAROL TRUAX MOTION TO VALUE COLLATERAL OF
JDP-1 BANK OF AMERICA, N.A.
9-18-13 [18]

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.

13. 09-90936-D-13 ROBERT/JOSIE ALVAREZ MOTION TO AVOID LIEN OF CAPITAL
DN-8 ONE BANK
10-8-13 [105]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

14. 13-91038-D-13 FARHAD SHAHIDI AND MOTION TO CONFIRM PLAN
RAS-3 JENNIFER BLACKNEY 9-5-13 [35]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The proof of service filed September 5, 2013 and the proof of service of the amended notice of hearing, filed September 27, 2013, are not signed under oath, as required by 28 U.S.C. § 1746. The hearing will be continued to November 19, 2013, at 10:00 a.m., the moving parties to file corrected proofs of service no later than November 8, 2013. The hearing will be continued by minute order. No appearance is necessary on November 5, 2013.

15. 13-91038-D-13 FARHAD SHAHIDI AND AMENDED MOTION TO VALUE
RAS-4 JENNIFER BLACKNEY COLLATERAL OF ROUNDPOINT
MORTGAGE
9-9-13 [40]

Final ruling:

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

16. 11-91439-D-13 HARLEY/BRENDA WATERS AMENDED MOTION TO MODIFY PLAN
JCK-1 9-19-13 [89]

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. 13-91639-D-13 MARIA HERNANDEZ MOTION TO VALUE COLLATERAL OF
JDP-1 NATIONWIDE CREDIT INCORPORATED
9-16-13 [9]

Final ruling:

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

18. 09-92143-D-13 JUAN CARRILLO AND MOTION TO APPROVE LOAN
CJY-1 MARICELA DECARRILLO MODIFICATION
10-8-13 [100]

19. 13-90843-D-13 MICHAEL/SARAH MOSUNIC MOTION TO CONFIRM PLAN
JDP-3 9-13-13 [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 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.

20. 13-91750-D-13 CHRISTY BENAFIELD MOTION TO VALUE COLLATERAL OF
SL-1 JP MORGAN CHASE BANK
10-1-13 [9]

Final ruling:

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

21. 13-90160-D-13 THOMAS/AIMEE FERRY MOTION TO MODIFY PLAN
BPC-1 9-24-13 [49]

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.

22. 10-92363-D-13 MARBITO/MYRNA MANDE MOTION TO MODIFY PLAN
CJY-2 9-30-13 [67]

23. 13-90863-D-13 LEONCIO ALVARADO MOTION TO CONFIRM PLAN
TOG-8 9-13-13 [56]

24. 13-91563-D-13 CONNIE CAMPBELL
BPC-1

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
10-11-13 [15]

25. 13-91765-D-13 HENRY PATTERSON
RAC-1

MOTION TO VALUE COLLATERAL OF
CITIBANK, N.A.
10-4-13 [8]

Final ruling:

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

26. 10-92172-D-13 RICKY/CONNIE CHURCH
HWW-3

MOTION TO MODIFY PLAN
9-24-13 [72]

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.

27. 12-92273-D-13 DEBBIE DEAN
DEF-5

MOTION TO MODIFY PLAN
9-20-13 [68]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

28. 10-90974-D-13 ANTONIO ARIAS AND MARIA MOTION TO VALUE COLLATERAL OF
JDP-1 GONZALEZ LOPEZ BANK OF AMERICA, N.A.
9-18-13 [51]

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. 10-90974-D-13 ANTONIO ARIAS AND MARIA MOTION TO VALUE COLLATERAL OF
JDP-2 GONZALEZ LOPEZ BANK OF AMERICA, N.A.
9-18-13 [56]

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.

30. 13-91475-D-13 JAIME MUNGUIA OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
10-2-13 [67]

Final ruling:

This case was dismissed on October 29, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

31. 09-90977-D-13 DANIEL/RONDA KNIGHT MOTION TO MODIFY PLAN
CJY-1 9-25-13 [67]

32. 13-91078-D-13 DAVID/JENNIFER VOLFI
BSH-1

MOTION TO CONFIRM PLAN
9-9-13 [30]

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 utilized a docket control number, BSH-1, they have used for a prior motion in this case, contrary to LBR 9014-1(c); and (2) the plan fails to provide for the full amounts of the priority claims filed by the Internal Revenue Service and the Franchise Tax Board, as required by 11 U.S.C. § 1322(a)(2).

For the reasons stated, the motion will be denied, and the court need not reach the issues raised by Wells Fargo Bank or the other issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

33. 13-91078-D-13 DAVID/JENNIFER VOLFI
BSH-4

MOTION TO VALUE COLLATERAL OF
CAPITAL ONE
9-10-13 [39]

Final ruling:

This is the debtors' motion to value, apparently, collateral of Capital One Bank, N.A. ("Capital One"), which, according to the debtors' supporting declaration, has a judgment lien against their residence. The declaration does not indicate for what purpose the debtors seek to value the property, just that they request the court to value the property at \$174,500. The motion will be denied because the moving papers are insufficient to provide notice to Capital One that its claim is the target of the motion, and insufficient to provide notice of the nature of the relief requested. The first line of the motion is: "To Officer, General Manager, Agent for Service of Process for Capital One." With that exception, the motion does not mention Capital One at all. The notice of hearing does not mention Capital One at all, and does not mention the judgment lien. The notice of hearing states only that the debtors have filed papers "requesting the court value their primary residence."

The first sentence of the motion is: "David & Jennifer Volfi, debtor(s) in the above-referenced matter, move(s) the Court, pursuant to 11 U.S.C. § 506(a), for an order valuing real property securing only a first deed of trust leaving a second deed of trust completely unsecured." The motion then states, "Debtor owes \$274,436 on the first deed of trust. As of the date of the filing of the petition, Debtor(s) estimate(s) the value of the real property to be \$174,500. Estimated deficiency balance is to be allowed as a general unsecured claim." This language suggests that the deficiency balance that is to be allowed as a general unsecured claim is \$99,936 (\$274,436 - \$174,500), which is the amount by which the first deed of trust is undersecured, whereas the court believes, although it is not certain, that the debtors' actual intention is to value Capital One's judgment lien at \$0. The motion does not mention the judgment lien or, except for the "To:" line, Capital One.

The moving papers are not sufficient to inform Capital One that its claim is the target of the motion, that the debtors are seeking to value the collateral securing its judgment lien, or that the debtors seek to value the collateral securing that lien at \$0, leaving Capital One's entire claim as a general unsecured claim. For this reason, the motion will be denied by minute order. No appearance is necessary.

34. 13-91482-D-13 CHRISTOPHER KAPMEYER OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
10-7-13 [22]

35. 12-92089-D-13 JAYSON/LAURA AGUIRRE MOTION FOR RELIEF FROM
MRG-1 AUTOMATIC STAY
CAPITAL ONE AUTO FINANCE VS. 9-30-13 [49]

Final ruling:

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

36. 13-91692-D-13 PHILLIP/SORENA MOTION TO VALUE COLLATERAL OF
CLH-1 HOLLINGSWORTH INDYMAC MORTGAGE SERVICES
9-30-13 [8]

Final ruling:

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

37. 13-91499-D-13 HARVEY FISH MOTION TO CONFIRM PLAN
BSH-2 9-19-13 [20]

Final ruling:

The motion will be denied as moot. The debtor filed an amended plan on October 2, 2013, making this motion moot. As a result the court will deny the motion without prejudice by minute order. No appearance is necessary.

38. 10-90915-D-13 BARBARA PIMENTEL
CJY-4

MOTION TO APPROVE LOAN
MODIFICATION
10-15-13 [92]

39. 13-91816-D-13 OSCAR/FELICIA ACOSTA
PLG-1

MOTION TO EXTEND AUTOMATIC STAY
10-14-13 [8]

Tentative ruling:

This is the debtors' motion to extend the automatic stay pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The debtors' prior case, Case No. 11-94192, was a chapter 13 case pending between December 8, 2011 and September 13, 2013, when it was dismissed for the debtors' failure to make payments under a confirmed plan. The debtors filed this new case on October 8, 2013. They state in their supporting declaration that they fell delinquent on their plan payments in the prior case due to unforeseen expenses. They add that they now have sufficient income since their last filing, and are able to make their proposed plan payments. No further details have been given.

In light of the debtors' Schedules I and J in this case and the prior case, of which the court takes judicial notice, the debtors' declaration is insufficient to rebut, by clear and convincing evidence, the presumption that this case was not filed in good faith, as required by § 362(c)(3)(C). In the prior case, the debtors' schedules indicated they had both been employed in their present positions for some time - the debtor for one and one-half years and the joint debtor for 27 years. Their combined net income was \$8,411. They were significantly above the median income for their household size; according to their Form 22C, their monthly disposable income was \$3,907. Their budget included generous deductions for household expenses, including \$1,200 per month for food for their family of four, which included the debtors and their 17- and 18-year old daughter and son, a \$250 per month "contingency," \$200 per month for personal care and grooming, and \$450 per month for after school activities and supplies for their children. Even with these generous deductions, they had \$2,104 left each month, sufficient to cover their plan payment, \$2,070.

The debtors' Form 22C and Schedules I and J in this new case are similar. The debtors continue to be well above median income; their Form 22C shows \$4,552 per month in monthly disposable income. They are both still employed in the same jobs, although they now have higher income, \$9,343 per month net. Their children are now adults - ages 19 and 20, respectively. The debtors have increased their home maintenance expense to \$500, their food expense to \$1,400, and their unexplained "contingency" to \$600, and have continued to budget \$450 per month for "expenses for children," although their children, as indicated, are adults. (The debtors have

only \$1,572 in unsecured debt; they are proposing a 100% plan.) Even with these generous deductions, the debtors have \$2,236 in monthly net income, sufficient to cover their plan payment of \$2,126.

The debtors have failed to provide sufficient information as to what circumstances caused them to fall behind on their plan payments in the prior case - four different times before the case was finally dismissed. Absent such information, the court is unable to find that there has been a substantial change in the debtors' financial or personal affairs since the dismissal of the prior case, such that the court can conclude that this case will be concluded with a confirmed plan that will be fully performed.

The court will hear the matter.

40. 13-91823-D-13 SABRINA AFIFI MOTION TO CONFIRM TERMINATION
KWS-1 OR ABSENCE OF STAY
10-15-13 [16]

41. 09-91034-D-13 GERI ROTHSTEIN MOTION TO INCUR DEBT
CJY-4 10-22-13 [52]

42. 13-91823-D-13 SABRINA AFIFI MOTION TO REDUCE OR WAIVE THE
DEPOSIT FOR TID (TURLOCK
IRRIGATION) O.S.T.
10-10-13 [10]

Final ruling:

This case was dismissed on October 28, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

43. 10-92641-D-13 DONALD/KAREN KOCH MOTION TO INCUR DEBT
RLB-9 10-15-13 [104]
44. 13-90647-D-13 ELIZABETH LOPEZ CONTINUED MOTION FOR ENTRY OF
13-9026 DTD-1 DEFAULT JUDGMENT
FIRST NATIONAL BANK OF OMAHA 9-10-13 [10]
V. LOPEZ
45. 08-90867-D-13 HEFRAIN/MARY ALANIS MOTION TO INCUR DEBT
CJY-1 10-21-13 [52]
46. 08-91472-D-13 LUKE MCDOUGLE CONTINUED MOTION TO VALUE
DCJ-3 COLLATERAL OF CITIZENS EQUITY
FIRST CREDIT UNION
10-2-13 [110]

47. 13-91378-D-13 DIEGO CASTILLO CONTINUED MOTION TO DISMISS
RDG-2 CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE FOR FAILURE TO
PROVIDE TAX DOCUMENTS
10-7-13 [25]
48. 07-90892-D-13 NICOLETTA RATTO MOTION TO AVOID LIEN OF
JCK-8 DISCOVER BANK
10-14-13 [145]
49. 07-90892-D-13 NICOLETTA RATTO MOTION TO AVOID LIEN OF
JCK-9 DISCOVER BANK
10-22-13 [150]

Final ruling:

This motion is a duplicate of the debtor's motion that is Docket Control No. JCK-8, Item 48 on this calendar. In particular, the abstract of judgment filed as an exhibit to DC No. JCK-8, DN 148, is the same as the abstract of judgment filed as an exhibit to this motion, DN 152.

This motion will be denied by minute order as duplicative. No appearance is necessary.