

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 12, 2013 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

2. The court will not continue any short cause evidentiary hearings scheduled below.
3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
4. If no disposition is set forth below, the matter will be heard as scheduled.

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|----|---------------|---------------------|------------------------|
| 1. | 13-29402-D-13 | RAMSEY/AMEL MOHAMED | MOTION TO CONFIRM PLAN |
| | TBK-3 | | 10-1-13 [36] |

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.

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|----|---------------|-------------------|---------------------------------|
| 2. | 13-30402-D-13 | JOB/JENNIE WILSON | CONTINUED OBJECTION TO |
| | RDG-1 | | CONFIRMATION OF PLAN BY RUSSELL |
| | | | D. GREER |
| | | | 9-20-13 [19] |

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

3. 11-49104-D-13 PONN SANN
LMT-5

MOTION FOR COMPENSATION FOR
LUIS M. TOVAR, DEBTOR'S
ATTORNEY(S), FEES: \$5,000.00,
EXPENSES: \$0.00
10-8-13 [59]

Tentative ruling:

This is the application of Luis Tovar, as the debtor's counsel ("Counsel"), for an award of additional attorney's fees in this case. The trustee opposes the application; Counsel has filed a reply to the trustee's opposition. For the following reasons, the court agrees with the trustee, and the application will be denied.

At the time this case was filed, Counsel projected his fees for the case would total \$3,500, and the debtor paid that amount prior to the filing of the petition, leaving no balance due. Counsel now seeks an award of an additional \$5,000. Counsel's time sheets include itemized entries totaling 49.7 hours, for which Counsel has billed \$200 per hour, for a total of \$9,940. After deduction of the \$3,500 paid pre-petition, there is a balance of \$6,440, which Counsel has voluntarily reduced to \$5,000, "so as not to cause plan feasibility issues." Declaration of Luis Tovar, filed Oct. 8, 2013 ("Decl."), at 2:19.

Even after the reduction of the requested fees to \$5,000, the amount requested would bring the total attorney's fees for this case to \$8,500, more than double the amount of the "no-look" fee Counsel would have been allowed under the court's guidelines for this consumer case, \$3,500.¹ The trustee opposes the application on the basis that Counsel chose to "opt in" to the no-look fee, and has not demonstrated that his services are outside the scope of the normal, anticipated work in a non-business case that should be covered by the no-look fee. The court agrees with the trustee.

The Guidelines provide:

If counsel has filed an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys," but the initial fee is not sufficient to fully compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The court will not approve, however, additional compensation . . . for work necessary to confirm the initial plan. Further, counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. This fee is sufficient to fairly compensate counsel for all preconfirmation services and most post-confirmation 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.

Guidelines, ¶ 4. In this case, there has been nothing unusual required in the way of legal services except that Counsel filed two motions to impose the automatic stay, both of which were denied because they were not filed within the 30-day deadline imposed by § 362(c)(4)(B). Counsel states in this application he has not

charged for his services in preparing either of those motions. The court has reviewed the debtor's schedules and statements filed in the case, and finds nothing unusual that would have necessitated more in the way of legal services than in the ordinary case. There have been no motions for relief from stay filed; Counsel did not file any motions to value collateral or motions to avoid judicial liens. The trustee did file two motions to dismiss the case, before a plan was confirmed - one for failure to provide a Class 1 Checklist and the other for a delinquency in plan payments. Neither should have necessitated anything unusual in terms of legal services, and there is no indication in Counsel's application or time records that anything unusual was required. Counsel did not find it necessary to file any amended schedules or statements. He did file an amended petition; however, the court has reviewed it carefully, and finds that no changes were made from the original. Counsel also re-filed the debtor's Exhibit D - statement of compliance with credit counseling requirement, but again, there were no changes made except that counsel included the certificate itself, which he had omitted from the original filing.²

Preparation and confirmation of the debtor's plan should not have been difficult; the debtor has only two secured creditors - his mortgage loan and a car loan, and no priority creditors. Yet the original plan prepared by Counsel omitted the car loan entirely, and omitted the amount of the monthly contract installment on the mortgage loan, the late charge, and the proposed dividend on the arrearage portion of the claim. The amended plan really did nothing more than correct those errors and adjust the plan payment to accommodate those changes. Counsel spent an inordinate amount of time on the amended plan and two motions to confirm it - at least 16 hours, which was excessive and most of which should have been unnecessary. Counsel's first motion was denied for (1) including an incorrect address for the courthouse; (2) failing to use a docket control number; (3) serving only the motion and notice of hearing, and not the plan itself; (4) failing to serve all creditors filing claims at the addresses on their proofs of claim; and (5) failing to serve several scheduled creditors. The second motion to confirm the same amended plan was granted.³

The court notes also that a portion of the attorney's fees billed were for services that are secretarial in nature, including preparing the petition for e-filing and e-filing it, organizing the case file, serving and filing documents, and leaving voicemail messages for the debtor. Finally, although the court cannot see behind the scenes to the amount of time actually spent on particular matters, it is clear that several time entries, on their face, do not represent reasonable charges. For example, for the order confirming the amended plan, which was nothing more than the court's standard form order (see DN 54), Counsel billed a total of 2.5 hours, as follows:

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|---|-----------|
| Prepare proposed order | 0.8 hours |
| Telephone call with trustee's office re issues pertaining to order; prepare proposed order and transmit it to trustee | 1.0 hours |
| Telephone call with trustee's office and debtor re status of order | 0.5 hours |
| Receive and examine order confirming plan | 0.2 hours |

Counsel seeks to justify the amount of his fees by claiming the petition had to

be prepared in a short amount of time, as the debtor's home was "on the verge of foreclosure" (Decl. at 2:25-26), and that the performance of a different attorney for the debtor in his two prior cases necessitated the extra fees incurred in this case.

Debtor had been represented by an Attorney who has now been disbarred as a consequence of negligent conduct such as that evidenced in Debtor's two dismissed Chapter 13 cases that preceded the present Chapter 13 case by less than one year. In light of Debtor's precarious position, extra diligence and effort had to be exercised by Applicant throughout the case to ensure confirmation of Debtor's plan.

Id. at 2:27-3:4. The court disagrees with the conclusion that the two prior cases had anything to do with the amount of fees generated in this case. The only thing the two prior cases affected was the need to file a motion to impose the automatic stay, which, as indicated, Counsel tried twice without success. For those services, Counsel has not billed, and no additional fees would be awarded in any event. To conclude, there is nothing in the application, supporting papers, or Counsel's reply that would override the presumption that the no-look fee was a reasonable fee for the legal services performed in this case, and the motion will be denied.

The court will hear the matter.

1 At the time this case was filed, the "no-look" fee for a consumer, or non-business, case was \$3,500. See Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases (Effective in cases filed on or after October 17, 2005) (the "Guidelines") (since superseded by LBR 2016-1).

2 As an example of excessive billing throughout the case, further discussed below, Counsel billed one-half hour for re-filing Exhibit D with the certificate.

3 Counsel filed the amended plan at two different times; however, it was the same plan. Thus, in total, Counsel prepared two plans in this case - the original which, as discussed above, was inadequate in ways that should have been apparent to Counsel, and a single amended plan.

4. 13-29404-D-13 OLIVIA EVANS
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
8-30-13 [16]

Tentative ruling:

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. The hearing was continued for further briefing. The debtor has filed a response, together with a supporting declaration, exhibits, amended Schedules B, C, and J, and an amended Form 22C; the trustee has filed a supplemental objection. For the following reasons, the objection will be sustained.

The first two issues raised by the trustee appear to have been resolved by the debtor's filing of amended Schedules B and C, although those schedules raise a serious concern about the debtor's good faith exhibited in this case. On the original schedules, the debtor listed as assets the sources of two payments she receives on an ongoing basis on account of her husband's death in 2003 - an annuity

and a worker's compensation death benefit award. The debtor valued each at \$1.00, adding that these assets were listed "for disclosure purposes." The trustee objected that the debtor's plan was not proposed in good faith in that, based on the payments the debtor is entitled to receive from both of these assets, the assets are obviously worth far more than \$1.00. In response, the debtor filed amended Schedules B and C on which she valued these assets at \$536,912 and \$41,193, respectively. The court seriously doubts that the grossly inaccurate values the debtor chose to disclose on her original schedules were in compliance with her duty of "careful, complete, and accurate" reporting. 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).¹

The trustee also objected to confirmation on the ground that the debtor's Form 22C was prepared based on a household size of four, which included (1) the debtor's 46-year old boyfriend, whom she has no legal duty to support, but who makes no contribution to the household, at least according to the debtor's Schedule I, and (2) the debtor's 22-year old son, who was unemployed, and who was also making no contribution to household expenses. The debtor's reply states that her 22-year old son has obtained employment and will be moving out-of-state; thus, the debtor has filed an amended Form 22C, this one based on a household size of three - the debtor, her boyfriend, and her 16-year old son. With a household size of three, and with the income reported on the amended Form 22C, the form still shows the debtor as below-median income; thus, it still shows an applicable commitment period of three years. (The debtor's proposed plan is a three-year plan.)

As a consequence of her son moving out of the home, the debtor testifies she expects her food budget to decrease by about \$150 per month. Thus, she has filed an amended Schedule J on which she decreased her food expense by \$150 (less than one-fourth the originally budgeted \$1,100); she proposes to increase her plan payment by \$150 per month. The debtor has not decreased her projected expenses for utilities, phone, internet, cable, cell phone service, clothing, laundry, medical and dental, transportation, recreation, grooming and personal care, or any other expense on account of her son moving out. Thus, whereas originally, the support of four persons in the household apparently cost \$5,844 per month, the support of three persons is projected to cost only \$150 less, or \$5,694. The court questions whether the debtor's proposal to increase her plan payment by a mere \$150 per month is made in good faith. The court suspects, for example, that if the debtor's 22-year old son had instead decided to move back into the home, the debtor would have increased her household expenses by significantly more than \$150; in any event, the court simply finds this de minimis decrease in expenses and the corresponding increase in the plan payment to be unreasonable.

As regards her boyfriend, the debtor's reply, which is supported by her declaration, states that he is dependent on her financial support because he was injured in a vehicle accident in the spring of this year and is not working. She adds that he contributes to the household when he can, and contributed his entire worker's compensation settlement, \$13,000, toward the household expenses and the debtor's attorney's fees for this case. The debtor adds that her 16-year old son is receiving social security benefits on account of his father's death, which she is contributing toward the household expenses, although she has no obligation to do so, under Drummond v. Welsh (In re Welsh), 711 F.3d 1120, 1131-33 (9th Cir. March 25, 2013). She contends her contribution of her son's social security benefits toward the household expenses outweighs any loss to unsecured creditors from the debtor's support of her boyfriend.

The trustee responds that the debtor's boyfriend's \$13,000 contribution was not included on the debtor's Form 22C or amended Form 22C. The trustee contends that, as the debtor has included her boyfriend as a household member for purposes of calculating her household size, and as she has testified that his \$13,000 in settlement proceeds were contributed toward the debtor's household expenses and attorney's fees, those monies should be included as income on the debtor's Form 22C. The court agrees. As the trustee contends, this change would put the debtor above the median family income, and she would be required to propose a 60-month plan.² As the proposed plan is only a 36-month plan, the plan does not meet the disposable income test, and the trustee's objection will be sustained.³

The court will hear the matter.

1 In her reply to the trustee's objection, the debtor refers to the amended schedules simply as "correct[ing] the error in the fair market value" of these assets. Debtor's reply, filed Sept. 30, 2013, at 1:25-26.

2 With this additional income, the debtor would be above median income even for the debtor's household size of four as of the petition date.

3 The debtor did not include her son's social security benefits on either of her Forms 22C; thus, the trustee's conclusion that the plan does not meet the disposable income test is not based in any way on a consideration of those benefits.

5. 13-29708-D-13 BENNY/LUCY YERRO MOTION TO VALUE COLLATERAL OF
JDP-2 GMAC MORTGAGE
10-3-13 [23]

Final ruling:

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

6. 08-35610-D-13 ANDREA CAPORICCI MOTION TO MODIFY PLAN
JCK-9 10-3-13 [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.

7. 11-24613-D-13 GUILLERMO/CECILIA YADAO MOTION TO APPROVE LOAN
MOT-2 MODIFICATION
10-14-13 [51]

8. 10-35615-D-13 ALEXANDRIA BURGESS MOTION TO MODIFY PLAN
PGM-1 10-4-13 [28]

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.

9. 13-29315-D-13 CARL JUBB MOTION TO CONFIRM PLAN
SJS-1 10-7-13 [33]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party gave only 36 days' notice of the hearing, rather than 42 days', as required by LBR 3015-1(d)(1) and applicable rules; and (2) the mailing matrix attached to the proof of service is from a different case; thus, the moving party failed to serve any of the creditors in this case.

As a result of these service and notice defects, the motion will be denied, and the court need not consider the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

10. 12-26423-D-13 DESIREE WISE MOTION TO MODIFY PLAN
MC-4 9-25-13 [70]

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.

11. 13-26034-D-13 GARY/SABRINA SCHWARTZ CONTINUED MOTION TO AVOID LIEN
TBK-4 OF ACCESS CAPITOL SERVICES,
INC.
9-10-13 [64]

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.

12. 13-25945-D-13 JEFFREY VAN RYN MOTION TO CONFIRM PLAN
BSH-4 9-25-13 [63]

13. 13-27045-D-13 GEORGINA DANIELS-WILLIAMS MOTION TO CONFIRM PLAN
JAD-1 9-30-13 [40]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve Santander Consumer at the address on its proof of claim at which it requested that notices be sent, as required by Fed. R. Bankr. P. 2002(g)(1), using instead the address at which it requested that payments be sent; and (2) the moving party failed to serve J.A.B. Properties, listed on her Schedule G and provided for by the plan, at all, as required by Fed. R. Bankr. P. 2002(b) and 1007(a)(1). The court notes that the address listed for J.A.B. Properties on the debtor's Schedule G is also the debtor's address; thus, it appears the address may not be J.A.B. Properties' actual address. In any event, however, J.A.B. Properties was not served at any address.

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

Final ruling:

This is the debtor's motion to value collateral of Santander Consumer USA Inc., "as servicer for Citi" ("Santander").¹ The motion will be denied because the moving party failed to serve Santander in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Santander (1) by first-class mail to the attention of an "owner or managing agent" at the address designated on Santander's proof of claim as the "address where payments should be sent," not at the address designated on the proof of claim as the address "where notices should be sent"; (2) by first-class mail to the attention of an "owner or managing agent" at a different address; and (3) by certified mail to Santander's registered agent for service of process.

The third method was insufficient because service on a corporation that is not an FDIC-insured institution must be by first-class mail, not certified mail. The first and second methods were insufficient because service on a corporation is to be to the attention of an "officer, managing or general agent, or agent for service of process," not an "owner or managing agent." Further, although not technically incorrect,² the court finds the moving party's choice to use the proof of claim address for the mailing of payments, as opposed to the address on the proof of claim expressly designated for "notices" (which was also the address the debtor used on her amended Schedule D), was not designed to ensure that the documents reached their intended target.³

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

1 The court expresses no view as to whether service on a servicing agent for the actual lienholder suffices to accomplish service for the purpose of stripping off a lien, although it seems unlikely. The court's ruling on any subsequent motion shall not be construed as endorsing this means of service as effective.

2 If this were a motion brought under Fed. R. Bankr. P. 2002(a), however, as opposed to Rule 7004, the use of the payment address would be technically incorrect. See Fed. R. Bankr. P. 2002(g)(1).

3 Due process requires notice that is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950); In re Hobdy, 130 B.R. 318, 320 (9th Cir. BAP 1991).

15. 13-33345-D-13 JOSEPH HOLDENER MOTION TO EXTEND AUTOMATIC STAY
HWW-1 10-15-13 [6]

16. 13-31953-D-13 ALBERTO CHAN MOTION TO VALUE COLLATERAL OF
SJS-1 WELLS FARGO BANK, NA
10-11-13 [22]

Final ruling:

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

17. 13-29654-D-13 PHILIP FLORES MOTION TO CONFIRM PLAN
SJS-1 10-7-13 [20]

18. 13-27258-D-13 TALANNA WILLIAMS MOTION TO VALUE COLLATERAL OF
DVD-3 OCWEN LOAN SERVICING, LLC
10-15-13 [57]

Final ruling:

This is the debtor's motion to value collateral of Ocwen Loan Servicing, LLC ("Ocwen"). The motion will be denied because the moving party failed to serve Ocwen in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Ocwen (1) by first-class mail at a street address, with no attention line; (2) by first-class mail to the attorneys who have filed a request for special notice on behalf of Ocwen in this case; and (3) by certified mail to the attention of an officer. The first method was insufficient because the rule requires that service be addressed to the attention of an officer,

managing or general agent, or agent for service of process, whereas here there was no attention line.

The second method was insufficient because, although an FDIC-insured institution may be served through an attorney who has appeared in a case for the institution (see Fed. R. Bankr. P. 7004(h), subd. (1)), there is no similar provision for a corporation, such as Ocwen, that is not an FDIC-insured institution. Further, the request for special notice filed in this case expressly states that Ocwen does not authorize the attorneys to act as its agent for service under Fed. R. Bankr. P. 7004. Finally, the third method was insufficient because service was made by certified mail, whereas service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be by first-class mail.

This distinction is important. Rule 7004(h), which governs service on an FDIC-insured institution, requires service by certified mail, whereas service on a corporation, partnership, or other unincorporated association must be by first-class mail. See preamble to Rule 7004(b). If service on a corporation, partnership, or other unincorporated association by certified mail were appropriate, the distinction in the manner of service, as between Rule 7004(h) and Rule 7004(b)(3), would be superfluous.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

19. 13-27258-D-13 TALANNA WILLIAMS
DVD-4

MOTION TO VALUE COLLATERAL OF
OCWEN LOAN SERVICING, LLC
10-15-13 [61]

Final ruling:

This is the debtor's motion to value collateral of Ocwen Loan Servicing, LLC ("Ocwen"). The motion will be denied because the moving party failed to serve Ocwen in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Ocwen (1) by first-class mail at a street address, with no attention line; (2) by first-class mail to the attorneys who have filed a request for special notice on behalf of Ocwen in this case; and (3) by certified mail to the attention of an officer. The first method was insufficient because the rule requires that service be addressed to the attention of an officer, managing or general agent, or agent for service of process, whereas here there was no attention line.

The second method was insufficient because, although an FDIC-insured institution may be served through an attorney who has appeared in a case for the institution (see Fed. R. Bankr. P. 7004(h), subd. (1)), there is no similar provision for a corporation, such as Ocwen, that is not an FDIC-insured institution. Further, the request for special notice filed in this case expressly states that Ocwen does not authorize the attorneys to act as its agent for service under Fed. R. Bankr. P. 7004. Finally, the third method was insufficient because service was made by certified mail, whereas service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be by first-class mail.

This distinction is important. Rule 7004(h), which governs service on an FDIC-insured institution, requires service by certified mail, whereas service on a corporation, partnership, or other unincorporated association must be by first-class mail. See preamble to Rule 7004(b). If service on a corporation, partnership, or other unincorporated association by certified mail were appropriate, the distinction in the manner of service, as between Rule 7004(h) and Rule 7004(b)(3), would be superfluous.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

20. 13-26259-D-13 JAGROOP SINGH AMENDED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY TRUSTEE
RUSSELL D. GREER
10-11-13 [66]

21. 13-29760-D-13 ALFRED/HELEN DIONG CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
9-20-13 [15]

Final ruling:

This case was converted to a case under Chapter 7 on October 30, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

22. 12-34862-D-13 RUEL/OFELIA BENTULAN MOTION TO MODIFY PLAN
PGM-4 10-4-13 [85]

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.

23. 13-30563-D-13 MARCELINO/LUZVIMINDA OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 MALVAR EXEMPTIONS
10-10-13 [36]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. The objection is based on the debtors' use of two mutually exclusive sets of exemption statutes to claim their exemptions. On October 14, 2013, the debtors filed an amended Schedule C in which they claimed exemptions under a single set of exemption statutes. As a result of the filing of the amended schedule, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

24. 13-27064-D-13 MILDRED GARCIA MOTION TO CONFIRM PLAN
SJS-2 10-1-13 [40]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve several of the creditors listed on her Schedule F at all, and thus, failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). This occurred despite the fact that the moving party used the PACER matrix as the service list, because her schedules were not filed with the petition, and when they were filed later, the debtor failed to file an amended master address list, with the result that several scheduled creditors do not appear on the PACER matrix. The court notes that the scheduled creditor holding by far the largest unsecured claim was scheduled with no address, and thus, has never received notice of the case (nor have the other creditors who were not listed on the master address list).

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

25. 13-24765-D-13 DAVE SCHEIDT MOTION TO CONFIRM PLAN
TBK-2 9-30-13 [43]

26. 10-28768-D-13 DAVID/GUADALUPE PELAYO MOTION TO MODIFY PLAN
TOG-2 9-15-13 [66]

27. 12-20069-D-13 RONALD/KIMBERLY MOTION TO MODIFY PLAN
FF-4 TANKERSLEY 9-25-13 [67]

Final ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The trustee opposed the motion on the ground that the debtors had failed to file or serve an amended plan and amended schedules. On October 30, 2013, the debtors filed a modified plan and a new motion to confirm it, set for hearing on December 10, 2013. As a result of the filing of the new motion, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

28. 13-27384-D-13 JOSEPHINE ARENAS-FIERRO MOTION TO CONFIRM PLAN
RCP-3 9-16-13 [37]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. On October 21, 2013, the trustee filed opposition, and on November 5, 2013, the debtors purported to withdraw the plan, although not the motion. However, after an opposing party has filed opposition, the moving party may not withdraw a motion without a court order. Fed. R. Civ. P. 41(a)(1)(A) and (2), incorporated in this contested matter by Fed. R. Bankr. P. 9014(c) and 7041. The court finds that withdrawal of the motion is not appropriate, and will deny the motion instead. The motion will be denied for the following reasons: (1) the only proof of service on file evidences service of the amended notice of hearing only; there is no evidence the motion and plan were ever served; and (2) there is no service list attached to the proof of service of the amended notice.

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

Tentative ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The trustee filed opposition, and the debtor filed a reply and supplemental declaration prior to the initial hearing. In connection with the initial hearing, the court issued a tentative ruling, and at the initial hearing, it was agreed the debtor would file supplemental evidence and the trustee would have an opportunity to file a reply. As of this date, the debtor has not filed any further evidence or argument. The trustee has filed a further reply. For the following reasons, the motion will be denied.

The court will begin by incorporating herein its tentative ruling for the September 17, 2013 hearing, which appears in the civil minutes, at DN 85. In his reply filed after the hearing, the trustee notes the absence of any further evidence from the debtor, and also notes that the debtor has not provided certain documents to the trustee she had agreed to provide; namely, her September 2013 paystubs and bank statements. Finally, the trustee states that the debtor's paystub for August 2013 shows that in addition to her gross salary of \$6,749 per month, the debtor has received additional income to date of \$8,786, which is not accounted for in her reported monthly income.

The additional income is not accounted for on the amended Schedule I the debtor filed November 19, 2012, the most recent Schedule I on file. However, it does appear to be accounted for in the debtor's current budget, filed on the official form for Schedule I but filed as an exhibit in support of the debtor's motion, at DN 78. Thus, the additional income does not appear to be an issue, except as it relates to the ways in which the debtor has offset it.

There remain the issues originally raised by the trustee and the court, in its September 17, 2013 tentative ruling, which the debtor has not addressed. For the reasons stated in that tentative ruling, and because the debtor has failed to provide the additional documentation requested by the trustee, the motion will be denied.

The court will hear the matter.

31. 13-31290-D-13 ROSA CARDENAS MOTION TO VALUE COLLATERAL OF
SAC-1 CITIBANK, N.A.
10-14-13 [16]

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.

32. 12-27014-D-13 LISA ROCHA CONTINUED MOTION TO MODIFY PLAN
WW-3 9-5-13 [60]

33. 13-24718-D-13 STEPHANIE JOHNSON CONTINUED MOTION TO CONFIRM
BSH-6 PLAN
9-7-13 [64]

Final ruling:

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

34. 13-31224-D-13 ALVARO MONCADA AND CARMEN MOTION TO APPROVE LOAN
JDP-2 MORAGA MODIFICATION
10-29-13 [27]

35. 13-31326-D-13 HENRY DIAZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-21-13 [15]

36. 13-31529-D-13 TANESIA WILLIAMS-ALLEN OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-21-13 [20]

37. 11-48232-D-13 SANDRA RUTLEDGE MOTION TO APPROVE LOAN
DN-3 MODIFICATION
10-29-13 [42]

Final ruling:

This is the debtor's motion for authorization to enter into a home loan modification. The notice of hearing states that opposition to the motion must be filed and served 14 days prior to the hearing; that if no opposition is timely filed, the motion may be resolved without oral argument; and that untimely opposition may be stricken. However, the moving party gave only 14 days' notice of the hearing, rather than 28 days', as required for notices purporting to require the filing of written opposition. The language in the notice may have inhibited parties-in-interest from filing written opposition or from appearing at the hearing.

The court will continue the hearing to November 26, 2013, at 10:00 a.m., to allow the moving party to file and serve, no later than November 12, 2013, a notice of continued hearing, which shall be a notice pursuant to LBR 9014-1(f)(2), stating that no written opposition is necessary. The moving party shall file a proof of service no later than November 15, 2013. The hearing will be continued by minute order. No appearance is necessary on November 12, 2013.

38. 13-26034-D-13 GARY/SABRINA SCHWARTZ CONTINUED MOTION TO CONFIRM
TBK-5 PLAN
9-10-13 [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.

39. 09-35591-D-13 JOHN/ANGELA CASTILLO

ORDER TO SHOW CAUSE - FAILURE
TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
10-22-13 [84]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.