

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Modesto, California

November 19, 2013 at 10:00 a.m.

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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.	11-92000-D-13	DOUGLAS/THERESA WINFREY	MOTION TO MODIFY PLAN
	CJY-3		10-15-13 [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.

2. 12-92400-D-13 DENNIS/DIANE LEMA OBJECTION TO CLAIM OF GMAC  
CJY-3 MORTGAGE, LLC, CLAIM NUMBER 2  
10-3-13 [48]

**Final ruling:**

This is the debtors' objection to the claim of GMAC Mortgage, LLC ("GMAC"), Claim No. 2 on the court's claims register. The debtors have objected solely to the arrearage portion of the claim, \$1,947.14. On October 31, 2013, after the objection was filed, Ocwen Loan Servicing, LLC, as transferee of GMAC, filed an amended proof of claim expressly amending Claim No. 2 and claiming pre-petition arrearages of \$0. As a result of the filing of the amended proof of claim, the debtors' objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

3. 13-91104-D-13 FABIO/NORA SOTELO MOTION TO CONFIRM PLAN  
CSL-2 10-3-13 [47]

4. 12-90605-D-13 MARCELLA WITT CONTINUED MOTION TO MODIFY PLAN  
CJY-4 7-23-13 [33]

5. 13-90205-D-13 MATTHEW/JOSIELYNN CRUDO MOTION TO CONFIRM PLAN  
PGM-4 9-27-13 [97]

**Tentative ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The trustee opposes the motion; the debtors have filed a reply. For the following reasons, the court concludes that the debtors have failed to meet their burden to demonstrate that the plan has been proposed in good faith and that it meets the disposable income test, and the motion will be denied.

The following section A was prepared before the debtors' reply to the trustee's opposition was filed; section B below addresses the reply.

**Section A**

This is the debtors' third attempt to confirm a plan in this case, and the third time the trustee has objected to their \$1,053 per month in voluntary 401(k)

contributions as not being reasonably necessary for their support or that of their dependents. See Parks v. Drummond (In re Parks), 475 B.R. 703, 709 (9th Cir. BAP 2012). As it did the first two times, the court agrees with the trustee this time, and will deny the motion on that basis (among others). In response to the trustee's opposition to an earlier motion, the debtors stated that their plan "exclude[d] the 401k contribution as is reflected in the increased payment under the amended plan." Debtors' Reply, filed July 2, 2013 ("Reply"), at 1:19-20. In its ruling on that motion, the court found that statement to be inaccurate and misleading; the court added that the increase in the plan payment was in response to an earlier objection by the trustee that the debtors were overwithholding on their taxes and improperly paying educational expenses for adult children; the increase was attributable solely to adjustments in those two areas of the debtors' Schedules I and J. The court's ruling stated unequivocally that the debtors were still making \$1,053 per month in voluntary retirement contributions; thus, the court agreed with the trustee that the plan was not proposed in good faith.

With this new plan, the debtors have filed amended Schedules I and J (their third set filed in the nine and one-half months this case has been pending), on which they show they are continuing to make \$1,053 per month in voluntary 401(k) contributions. In other words, despite the court's prior rulings on the issue, the first of which was issued April 30, 2013, the debtors have continued to enjoy the benefit of their \$1,053 in monthly retirement contributions for the past six months, for a total of \$6,318 which, by the trustee's reckoning and the court's, should have gone to their unsecured creditors. Given these circumstances, the court is likely to have difficulty finding any future plan that does not address this \$6,318, that being the amount the debtors managed to accumulate after the court's initial ruling on the issue, to be proposed in good faith.

The trustee's second objection is that the debtors' amended Form 22C shows they have monthly disposable income of \$1,426.94 which, over the applicable commitment period, five years, would yield a 40% dividend, whereas the plan provides for only 30%; thus, the plan fails the disposable income test. The court concurs.

Finally, the court questions the debtors' good faith in increasing the amount they propose to pay on their car loan from \$50 per month in their first two proposed plans to \$450 per month in this plan. Although the car lender objected to confirmation of the first plan, it did so primarily on the ground that it disagreed with the debtors' valuation of the vehicle. Even in that objection, the lender requested that the monthly payment be increased only to \$119. After the debtors' motion to value the car claim was granted, the debtors proposed a second plan, in which the payment on the car loan remained at \$50; the lender did not object. The court can find no reason for the sudden increase to \$450 per month in this new plan other than an intent to protect themselves, by paying off their car loan as soon as possible, thus shifting to their unsecured creditors more of the risk of a downturn in the debtors' financial circumstances in the future. For this reason also, the court finds that the plan has not been proposed in good faith.

## Section B

Having been caught by the trustee a third time trying to retain \$1,053 per month in income the trustee had objected to twice before, and as to which the court had ruled unequivocally twice before, the debtors in their reply acknowledge that their 401(k) deduction is "inappropriate," and they claim to have "amended the Plan to contribute the \$1,000.00 for an additional \$53,000.00 in disposable income." Debtors' Reply, filed Nov. 12, 2013, at 1:24-26. (As of this date, they have not

amended the plan.) This, they claim, will result in a dividend greater than 40% (although they do not specify by how much), which would satisfy the trustee's second concern.

The court is not satisfied with this reply. First, the trustee has had to take the trouble to uncover the debtors' third attempt to retain for themselves funds the court had twice previously ruled they could not, and the court has had to take the trouble to rule on the issue a third time. Second, this gamesmanship, which has been in derogation of the debtors' duty to propose a plan in good faith, has resulted in the debtors retaining for themselves \$6,318 in funds they accumulated via this strategy which they do not now offer to make available to their creditors. Third, the court continues to doubt the debtors' good faith in light of their proposed increase in the payment on their car loan from \$50 per month to \$450 per month.

For the reasons stated, the court concludes that the debtors have not met their burden of demonstrating that the plan has been proposed in good faith or that it meets the disposable income test; accordingly, the motion will be denied. The court will hear the matter.

6. 11-90208-D-13 SHARON ARRO MOTION TO VALUE COLLATERAL OF  
JDP-1 BANK OF AMERICA, N.A.  
10-16-13 [46]

**Final ruling:**

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

7. 10-90712-D-13 JERRY/CZARINA CAPARROS MOTION TO VALUE COLLATERAL OF  
JDP-1 OCWEN  
10-14-13 [54]

**Final ruling:**

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

8. 13-91815-D-13 CARLOS CENDEJAS AND MOTION TO VALUE COLLATERAL OF  
TOG-1 LORENA VEGA CITIMORTGAGE, INC.  
10-18-13 [8]

**Final ruling:**

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

9. 08-92717-D-13 VIRGINIA ARCEO MOTION TO REFINANCE  
CJY-1 10-24-13 [83]

10. 11-94318-D-13 MICHAEL/KAREN CORNELIUS MOTION TO INCUR DEBT  
JAD-2 10-23-13 [49]

11. 13-90820-D-13 ROBERT/PAMELA WILLIAMS OBJECTION TO CLAIM OF WAKE  
CLH-5 CONSTRUCTION, CLAIM NUMBER 6  
9-30-13 [79]

12. 13-90820-D-13 ROBERT/PAMELA WILLIAMS MOTION TO CONFIRM PLAN  
CLH-6 9-30-13 [83]

**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.

13. 08-92828-D-13 KATHY GRANDSTAFF MOTION FOR RELIEF FROM  
SW-1 AUTOMATIC STAY  
ALLY FINANCIAL VS. 10-25-13 [54]

**Final ruling:**

In the debtor's 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.

14. 11-92328-D-13 DALE/GLORIA BOUCHER CONTINUED OBJECTION TO CLAIM OF  
PLG-6 DR. ROBIN R. HINCHMAN C/O LAW  
OFFICES OF MICHAEL LINN, CLAIM  
NUMBER 11  
8-15-13 [90]

**Final ruling:**

The hearing on this objection to claim will be continued to December 3, 2013, at 10:00 a.m., to be heard with the debtors' motion to quash subpoenas issued by the claimant, which is a matter between the same parties as this objection to claim. The hearing will be continued by minute order. No appearance is necessary on November 19, 2013.

15. 08-92142-D-13 ROBERT/ERICA ANDERSON MOTION TO VALUE COLLATERAL OF  
JDP-1 RIVER CITY BANK  
10-3-13 [65]

**Final ruling:**

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

16. 13-91842-D-13 DWAYNE/CHRISTINE SCHALLMO MOTION TO VALUE COLLATERAL OF  
MTM-1 WELLS FARGO  
10-16-13 [10]

**Final ruling:**

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

17. 09-92143-D-13 JUAN CARRILLO AND MOTION TO MODIFY PLAN  
CJY-2 MARICELA DECARRILLO 10-8-13 [105]

**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.

18. 13-91545-D-13 THOMAS/ZENIA HANSEN OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
10-21-13 [17]

**Final ruling:**

**Objection withdrawn by moving party. Matter removed from calendar.**

19. 13-91745-D-13 DOMINGO RODRIGUEZ AND MOTION TO VALUE COLLATERAL OF  
TOG-1 VIRGINIA LOPEZ BANK OF AMERICA, N.A.  
10-11-13 [9]

20. 12-90746-D-13 JEFFREY/RENEE BIXLER MOTION TO MODIFY PLAN  
CJY-4 10-15-13 [46]

**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.

21. 13-91848-D-13 JOSE SANCHEZ MOTION FOR RELIEF FROM  
ADR-1 AUTOMATIC STAY AND/OR MOTION  
WOODS INVESTMENTS, LLC VS. FOR ADEQUATE PROTECTION  
10-19-13 [8]

**Final ruling:**

This matter is resolved without oral argument. This is Woods Investments, LLC's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the creditor's interest in the property is not adequately protected. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

22. 13-90951-D-13 MARVIN/PATRICIA FAINTER MOTION TO VALUE COLLATERAL OF  
RLF-1 RIVER CITY BANK  
10-22-13 [16]

**Final ruling:**

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

23. 13-91554-D-13 ROBERT/ELISSA HART OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
10-21-13 [29]

**Final ruling:**

The objection will be overruled as moot. The debtors filed an amended plan on November 11, 2013, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

24. 13-91157-D-13 MARTIN PRICE MOTION TO VALUE COLLATERAL OF  
DEF-3 BANK OF AMERICA HOME LOANS  
10-18-13 [41]

**Final ruling:**

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

25. 10-92363-D-13 MARBITO/MYRNA MANDE MOTION TO VALUE COLLATERAL OF  
JDP-1 BANK OF AMERICA, N.A.  
10-14-13 [78]

**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.

26. 13-91563-D-13 CONNIE CAMPBELL OBJECTION TO CONFIRMATION OF  
RCO-1 PLAN BY JPMORGAN CHASE BANK,  
N.A.  
10-22-13 [22]

27. 12-90465-D-13 ALFREDO/MARTA ACOSTA MOTION TO MODIFY PLAN  
CJY-4 10-7-13 [62]

**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.

28. 13-91866-D-13 CARLOS/DORA CHAVEZ MOTION TO VALUE COLLATERAL OF  
TOG-1 BANK OF AMERICA, N.A.  
10-18-13 [8]

**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. 13-91668-D-13 LORENZO/LEONOR LAZARO MOTION TO VALUE COLLATERAL OF  
TOG-1 JPMORGAN CHASE BANK, N.A.  
10-10-13 [14]

**Final ruling:**

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

30. 10-93469-D-13 TREVOR/MICHELLE THOMASSER MOTION TO VALUE COLLATERAL OF  
JDP-1 HSBC MORTGAGE  
10-14-13 [45]

**Final ruling:**

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

31. 12-90570-D-13 THOMAS/CHIEKO CASTLE MOTION TO MODIFY PLAN  
CJY-5 10-15-13 [59]

**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.

32. 11-92377-D-13 TINA SAUCEDA MOTION TO APPROVE LOAN  
PLG-2 MODIFICATION  
10-17-13 [47]

33. 09-93579-D-13 GEORGE/MONICA GIVARGIS MOTION TO MODIFY PLAN  
CJY-1 10-16-13 [118]

**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. 13-90282-D-13 LENA BAKER MOTION TO CONFIRM PLAN  
LOB-1 9-23-13 [76]

**Tentative ruling:**

This is a motion to confirm an amended chapter 13 plan. The trustee has filed opposition. For the following reasons, the motion will be denied.

An earlier motion to confirm a similar plan was denied because of a variety of procedural defects; the present motion states it has been filed to correct the errors in the earlier filing which, according to the motion, "prevented the court from addressing the substantive issues of the plan and the objections by the trustee." Amended motion for plan confirmation hearing, filed Sept. 23, 2013, at 1:27-2:1. The first problem the court sees, among several, is that although certain procedural defects may have been corrected, serious substantive issues raised in the court's ruling on the prior motion have not been addressed. These were that:

(1) the plan named the debtors in the case as Lena Mae Baker and Lamar Baker, whereas the only debtor named on the petition commencing this case was Lena Mae Baker; although an amended petition was filed four months into the case purporting to name Lamar Baker as joint debtor, the moving party had submitted no authority for the proposition that a joint debtor may be added to a bankruptcy case simply by the filing of an amended petition; and

(2) the petition commencing the case was signed by Lena Mae Baker, with no reference to a conservator, whereas the debtor's attorney had since filed as an exhibit a copy of an order of the Stanislaus County Superior Court that predates the

filing of this case by five months, by which Kenneth Baker was appointed as conservator of the person and estate of Lena Baker; thus, the court had insufficient evidence to conclude that this case was properly commenced by Lena Mae Baker herself. Further, although the amended petition was signed by Kenneth Baker, as conservator for Lena Baker, the moving party had submitted no authority for the proposition that a petition that was ineffective to commence a bankruptcy case, due to lack of authority on the part of the alleged debtor, may be corrected retroactively simply by filing an amended petition.

These issues far outweigh, in terms of significance, the procedural defects the court also pointed out in its earlier ruling, yet the moving party (whether that be the debtor Lena Mae Baker, her conservator Kenneth Baker, her attorney Bryan Harrison, and/or Kenneth Baker, as representative of the probate estate of Lamar Baker) has not addressed either of these critical issues. These issues also tie in with others that have been raised by the trustee. First, Lamar Baker died over a year before this case was commenced, and as the trustee observes, the Bankruptcy Code does not provide for the filing of a bankruptcy petition by, or for the amending of a bankruptcy petition to add, a deceased person as a debtor. Only an "individual" may be a debtor in a chapter 13 case. § 109(e). Although the term "individual" is not defined in the Code, the moving party or parties have submitted no authority for the proposition that, as used in § 109(e), it includes a deceased individual. (The issue is in play in this motion, as the plan that is the subject of the motion purports to include Kenneth Baker, as personal representative for Lamar Baker, as a plan proponent.)

Second, as the trustee points out, there may well be an overlap between property of the bankruptcy estate in this case and property of the probate estate of Lamar Baker. It is significant, as the trustee also observes, that neither the conservatorship proceeding involving Lena Mae Baker nor the probate proceeding involving the estate of Lamar Baker was disclosed on the original or amended statement of financial affairs filed in this case, an oversight that strongly appears to contravene the debtor's (or her conservator's) duty of "careful, complete, and accurate" reporting in his or her schedules and statements. 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). Further, there is no indication the debtor or Kenneth Baker as her conservator or as personal representative of the estate of Lamar Baker has complied with the trustee's request for copies of inventories and valuations filed in the probate case.

Finally, as indicated in the court's prior ruling, it strongly appears this case was not properly commenced, even as to the "original" debtor, Lena Mae Baker. In a declaration in support of an application for an extension of time to file schedules and statements, filed February 23, 2013, the debtor's attorney states, "The conservator for Lena Mae Baker filed a bankruptcy petition on February 15, 2013." Declaration of Bryan Harrison, filed Feb. 23, 2013, at ¶ 5. That statement is not accurate. The petition, which was signed and filed by Mr. Harrison, purports to have been signed by Lena Mae Baker as the debtor - there is no mention of a conservator or guardian anywhere on the petition, and Kenneth Baker's name does not appear anywhere.

Although a bankruptcy petition may be filed by a guardian or conservator for an incompetent person (see Fed. R. Bankr. P. 1004.1), and although an incompetent person who does not have an appointed guardian or conservator may file a petition by a next friend or guardian ad litem (id.), neither occurred here. Here, the petition

was signed by Lena Mae Baker and only Lena Mae Baker, on her own behalf, whereas, apparently, she was incompetent to do so, and as a matter of law, had no authority to cause her assets to be put into a bankruptcy estate. (Kenneth Baker purports to be the conservator "of the Estate & Person for" Lena Mae Baker.)

The debtor's counsel should be prepared to address these issues. Assuming they are addressed satisfactorily, counsel should be prepared to address the other issues raised by the trustee, including that the plan lists but does not provide for the secured claims of Saxon Mortgage Service and Wachovia Mortgage/World Savings and Loan, and thus, does not comply with § 1325(a)(5). The plan states in the Additional Provisions that "[t]he debtor may file a motion to modify loan and payments" or a "motion to value the . . . property to reduce the payment and to eliminate the arrears on the mortgage;" however, that process must be accomplished prior to confirmation of a plan (see LBR 3015-1(j)), but the debtor has taken no steps toward that end in the nine months the case has been pending.

For the reasons stated, the court intends to deny the motion. The court will hear the matter.

35. 13-90085-D-13 CHRISTIAN/SANDRA GUITRON MOTION TO CONFIRM PLAN  
LRR-6 10-2-13 [103]

**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.

36. 13-91686-D-13 ROBERT/KATHY STATON MOTION TO VALUE COLLATERAL OF  
JAD-1 U.S. BANK  
10-8-13 [16]

**Final ruling:**

This is the debtors' motion to value collateral of U.S. Bank (the "Bank"). The motion will be denied for the following reasons. First, 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 at two different addresses by first-class mail to the attention of an "owner or managing agent," whereas service on an FDIC-insured institution, such as the Bank, must be (1) by certified mail, not first-class mail, and (2) to the attention of an officer, and only an officer.

These distinctions are important. Rule 7004(b)(3), which governs service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, provides that service must be by first-class mail (see preamble

to Rule 7004(b)) to the attention of an officer, managing or general agent, or agent for service of process, whereas Rule 7004(h), which governs service on an FDIC-insured institution, requires service by certified mail to the attention of an officer. If service on an FDIC-insured institution were properly accomplished in the same manner as service on a corporation that is not an FDIC-insured institution, these distinctions would be superfluous.

Second, the moving papers do not provide sufficient information to enable the court to determine whether to grant the motion or the potential respondent whether to oppose it. The motion states only that the moving parties value the collateral at \$135,043, and that the "[e]stimated deficiency balance is to be allowed as a general unsecured claim." The motion does not state what deficiency balance the debtors seek to have allowed as an unsecured claim - the amount by which the senior lien on the property exceeds value of the property? The amount of a junior lien on the property, if any, and if so, what portion? The moving papers do not indicate whether the Bank holds a senior or a junior lien on the property, and they do not indicate the amount of the Bank's claim or of claims secured by liens senior to the Bank's, if any. The moving papers are not sufficient to inform the Bank that its claim is the target of the motion, or to inform it of the nature of the relief requested.

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

37. 13-90289-D-13 DENNIS/CYNTHIA MASSEY MOTION FOR RELIEF FROM  
MRG-1 AUTOMATIC STAY  
HARLEY-DAVIDSON CREDIT CORP. 10-10-13 [20]  
VS.

**Final ruling:**

Creditor, Harley-Davidson Credit Corp., is a Class 3 creditor in a plan confirmed May 16, 2013, pursuant to which the stay lifted upon entry of the order confirming plan. The confirmed plan states that, "Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 3 secured claim to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and nonjudicial remedies against its collateral." Accordingly, the motion will be denied by minute order as unnecessary. No appearance is necessary.

38. 12-91390-D-13 JESUS ARTEAGA AND ELIUT MOTION TO APPROVE LOAN  
TOG-6 AGUIRRE MODIFICATION  
10-17-13 [36]

39. 10-91693-D-13 SEAN/MICHELLE COOLEY  
SSA-3

MOTION TO MAINTAIN CHAPTER 13  
CASE OPEN PENDING RESOLUTION OF  
SECURED MORTGAGE LIEN REMOVAL  
WITH JUNIOR DEED OF TRUST  
HOLDER BANK OF AMERICA  
10-17-13 [92]

**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 Maintain Chapter 13 Case Open Pending Resolution of Secured Mortgage Lien Removal with Junior Deed of Trust Holder Bank of America is supported by the record. As such the court will grant the Motion to Maintain Chapter 13 Case Open Pending Resolution of Secured Mortgage Lien Removal with Junior Deed of Trust Holder Bank of America. Moving party is to submit an appropriate order. No appearance is necessary.

40. 09-93295-D-13 ANDREW/HEATHER LAZAROM  
DEF-8

MOTION TO MODIFY PLAN  
10-1-13 [132]

**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.

41. 13-91499-D-13 HARVEY FISH  
BSH-3

MOTION TO CONFIRM PLAN  
10-2-13 [25]

**Final ruling:**

The motion will be denied as moot. The debtor filed an amended plan on October 26, 2013, making this motion moot. As a result the court will deny the motion without prejudice by minute order. No appearance is necessary.

42. 12-90605-D-13 MARCELLA WITT  
CJY-6

MOTION TO APPROVE LOAN  
MODIFICATION  
11-4-13 [54]

43. 13-91038-D-13 FARHAD SHAHIDI AND CONTINUED MOTION TO CONFIRM  
RAS-3 JENNIFER BLACKNEY PLAN  
9-5-13 [35]

**Final ruling:**

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

44. 11-90740-D-13 ROBERT/DEBRA WILDING MOTION TO INCUR DEBT  
CJY-2 11-4-13 [33]

45. 11-93675-D-13 RAQUEL CORONA MOTION TO APPROVE LOAN  
CJY-1 MODIFICATION  
10-29-13 [44]