

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 29, 2016 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. | 16-25809 -D-13
RDG-1 | MARY GONZALES | OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-24-16 [18] |
| 2. | 16-24610 -D-13
HRH-1 | ARMANDO COVARRUBIAS
BMO HARRIS BANK, N.A. VS. | MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-1-16 [51] |

3. [16-24610](#)-D-13 ARMANDO COVARRUBIAS MOTION TO CONFIRM PLAN
TOG-1 10-14-16 [[42](#)]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The trustee filed opposition and the debtor filed a reply stating he does not oppose the trustee's opposition. Therefore, the motion will be denied by minute order. No appearance is necessary.

4. [14-29812](#)-D-13 ANDRE COOPER AND KIMBERLY MOTION TO MODIFY PLAN
WMR-1 GILLIAM 10-21-16 [[136](#)]

Final ruling:

This is the debtors' motion to confirm a fifth modified chapter 13 plan. The motion will be denied for the following reasons. First, until November 11, 2011, there was no such plan on file. The document docketed as the plan, DN 140, consists of a single page only - page 1 of the plan. In addition to filing the motion and notice separately (DNs 136 and 139), the moving parties also filed a group of documents together as one document, DN 137 (contrary to this court's Revised Guidelines for the Preparation of Documents, EDC 2-901, and LBR 9004-1(a)). These included the notice, motion, exhibit cover sheet (but not the exhibits), a supporting declaration that was not filed separately, and the first page only of the proof of service. The exhibit cover sheet lists the exhibits as a modified chapter 13 plan and amended Schedules I and J. But the actual exhibits, filed separately at DN 138, do not include the plan. In other words, the fifth modified plan did not appear anywhere on the court's docket. The belated filing of a complete copy of the plan, on November 11, 2016, was not in compliance with LBR 3015-1(d)(1).

This also brings the proof of service into question. The proof of service identifies the documents served as including "Exhibits (Modified Chapter 13 Plan Schedules I & J)," but as indicated, the exhibits actually filed with the court do not include a plan. Thus, the proof of service is not sufficient to evidence service of the fifth modified plan. (The declaration of William Rubendall, filed November 11, 2011 with the complete copy of the plan, is not sufficient to cure this defect. Mr. Rubendall states that the fifth amended plan was served on all creditors on October 9, 2016. However, Mr. Rubendall is not the individual who signed the proof of service, and he has not demonstrated his personal knowledge of the facts of service.)

Third, the motion includes a docket control number, WMR-1, that has been used several times before in this case; the notice of motion is marked docket control number "WMR"; and the exhibits and proof of service include no docket control number at all, all of which are contrary to LBR 9014-1(c). The local rule requires a motion and all documents filed in support of and in opposition to it to include the same docket control number and it must be a docket control number that has not been used before in the case.

Fourth, the moving parties served a different trustee, not the trustee in this case, and failed to serve the creditors filing Claim Nos. 3, 10, 12, and 13 at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g).

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

5. [11-39616](#)-D-13 MONTY/PENNIE RAMIREZ
CJY-2

MOTION TO VALUE COLLATERAL OF
GREEN TREE
10-26-16 [[66](#)]

Final ruling:

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

6. [16-25617](#)-D-13 DOLAN PARKER
KKY-1
OPERATING ENGINEERS LOCAL
UNION #3 FEDERAL CREDIT
UNION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-1-16 [[43](#)]

Final ruling:

This matter is resolved without oral argument. This is Operating Engineers Local Union #3 Federal Credit Union's motion for relief from automatic stay. The court's 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 debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

7. [16-25617](#)-D-13 DOLAN PARKER
KKY-2
OPERATING ENGINEERS LOCAL
UNION #3 FEDERAL CREDIT
UNION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-1-16 [[54](#)]

Final ruling:

This matter is resolved without oral argument. This is Operating Engineers Local Union #3 Federal Credit Union's motion for relief from automatic stay. The court's 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 debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

8. [16-25617](#)-D-13 DOLAN PARKER MOTION FOR RELIEF FROM
KKY-3 AUTOMATIC STAY
OPERATING ENGINEERS LOCAL 11-1-16 [[65](#)]
UNION #3 FEDERAL CREDIT
UNION VS.

Final ruling:

This matter is resolved without oral argument. This is Operating Engineers Local Union #3 Federal Credit Union's motion for relief from automatic stay. The court's 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 debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

9. [16-25617](#)-D-13 DOLAN PARKER OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
10-24-16 [[40](#)]

10. [16-25818](#)-D-13 PAUL/THERESE WOODRUFF OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-24-16 [[17](#)]

11. [14-28026](#)-D-13 MIGUEL/MARTHA GOMEZ MOTION FOR RELIEF FROM
NLG-1 AUTOMATIC STAY
SETERUS, INC. VS. 10-25-16 [[109](#)]

Final ruling:

This matter is resolved without oral argument. This is Seterus, Inc.'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.

12. [15-23828](#)-D-13 SHERYL HUDSON MOTION TO MODIFY PLAN
WW-6 10-6-16 [[150](#)]

Final ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied because, as the trustee points out in his opposition, page 2 of the plan, as filed with the court, is missing. Further, although the proof of service purports to evidence service of the plan, the court cannot be certain the version served included page 2. The belated filing of a complete copy of the plan, on November 10, 2016, was not in compliance with LBR 3015-1(d) (1).

In addition, the moving party failed to serve Adelaide Hudson, listed on the debtor's Schedule H as her co-debtor on two mortgages, as required by Fed. R. Bankr. P. 2002(b). Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes a co-debtor on obligations of the debtor.

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

13. [16-25228](#)-D-13 PATRICK WOLRIDGE CONTINUED OBJECTION TO
ETL-1 CONFIRMATION OF PLAN BY U.S.
BANK, N.A.
9-28-16 [[16](#)]

14. [16-25228](#)-D-13 PATRICK WOLRIDGE CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
9-26-16 [[13](#)]

15. [16-25832](#)-D-13 TIMOTHY HOSKER AND OBJECTION TO CONFIRMATION OF
JM-1 CRYSTAL HOSKER-STARR PLAN BY SPRINGLEAF FINANCIAL
SERVICES, INC.
10-24-16 [[15](#)]

16. [12-42133](#)-D-13 SCOTT EURE MOTION TO MODIFY PLAN
JCK-3 10-14-16 [[37](#)]

Final ruling:

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

17. [16-25633](#)-D-13 CARLOS PENALOZA AND MOTION TO CONFIRM PLAN
TOG-2 ELIZABETH ESPINOZA 9-27-16 [[15](#)]

Final ruling:

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

18. [13-21234](#)-D-13 JOHN/CYNTHIA GIFFORD MOTION TO MODIFY PLAN
PGM-5 10-24-16 [[111](#)]

Final ruling:

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

19. [14-27834](#)-D-13 DORELLE WYATT MOTION TO MODIFY PLAN
JCK-4 10-18-16 [[57](#)]

20. [15-25135](#)-D-13 RODERICK/BERNADETTE VIRAY MOTION TO INCUR DEBT
JCK-2 10-28-16 [[37](#)]

21. [16-24940](#)-D-13 FELIX AJAYI OBJECTION TO CLAIM OF
EMPLOYMENT DEVELOPMENT DEPT.,
CLAIM NUMBER 7
9-28-16 [[23](#)]

Final ruling:

This is the debtor's objection to the claim of the Employment Development Department ("EDD"). The objection will be overruled for the following reasons. First, the objection and documents supporting it do not include a docket control number, as required by LBR 9014-1(c). Second, the exhibits were filed separately and do not include a caption page or exhibit index, as required by the court's Revised Guidelines for the Preparation of Documents, EDC 2-901 and LBR 9004-1(a). Third, although the debtor served the EDD at the address on its proof of claim and also at its post office box address on the Roster of Governmental Agencies, he failed to include the mail code and zip code extension in the address as it appears on the Roster.

Finally, the objection is not supported by evidence sufficient to overcome the prima facie validity afforded the claim by Fed. R. Bankr. P. 3001(f). The debtor's objection is that the claim should not be allowed as a secured claim because the EDD recorded its judgment only in Sacramento County whereas all of the debtor's real and personal property is in San Joaquin County. The only evidence supporting this position is a copy of the debtor's Schedule A/B. Although the schedule does show real property only in San Joaquin County and although the court might assume all of the debtor's personal property is also in San Joaquin County, the schedule does not identify the location of any of the debtor's personal property. Further, although a debtor's schedules can constitute evidentiary admissions (In re Heath, 331 B.R. 424, 431 (9th Cir. BAP 2005)), they can be amended at any time before the case is closed as a matter of course. Id. In this case, the court is not persuaded the debtor's Schedule A/B is sufficient evidence, particularly where filing a sworn declaration of the debtor would have been, so far as the court can tell, so easy.

For the reasons stated, the objection will be overruled by minute order. No appearance is necessary.

22. [16-24940](#)-D-13 FELIX AJAYI

MOTION TO CONFIRM PLAN
10-13-16 [[36](#)]

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 motion and supporting documents do not include a docket control number, as required by LBR 9014-1(c); and (2) the plan is not signed by the debtor or the debtor's attorney, as required by LBR 9004-1(c).

For these reasons, 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.

23. [16-26640](#)-D-13 JOHN/ANDREA HERNANDEZ
MJD-1

MOTION TO VALUE COLLATERAL OF
CARMAX BUSINESS SERVICES, LLC
10-26-16 [[14](#)]

Final ruling:

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

24. [16-26643](#)-D-13 MAEHELLENA HARLAN
JCK-1

MOTION TO VALUE COLLATERAL OF
SKOPOS FINANCIAL
10-28-16 [[16](#)]

Final ruling:

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

25. [16-27143](#)-D-13 RUBEN/ROSITA RILLON

MOTION FOR TEMPORARY WAIVER OF
THE CREDIT COUNSELING
REQUIREMENT
10-27-16 [[8](#)]

Final ruling:

This case was dismissed on November 7, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

26. [16-20646](#)-D-13 JEWELL WONG MOTION TO CONFIRM PLAN
PGM-3 9-23-16 [[84](#)]

27. [16-22849](#)-D-13 BRYAN/SONIA WATANABE MOTION TO MODIFY PLAN
MC-1 10-4-16 [[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 referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

28. [16-25149](#)-D-13 THEODORE MADZEY CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
9-26-16 [[42](#)]

29. [16-25149](#)-D-13 THEODORE MADZEY CONTINUED MOTION TO DISMISS
RDG-2 CASE
10-4-16 [[55](#)]

30. [16-25449](#)-D-13 GLENER SUASIN MOTION TO CONFIRM PLAN
JCK-1 10-14-16 [[19](#)]

31. [15-29450](#)-D-13 HOWARD HILL MOTION TO MODIFY PLAN
PLG-2 10-14-16 [[37](#)]

Final ruling:

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

32. [16-21452](#)-D-13 MARIO ORTIZ CONTINUED MOTION TO CONFIRM
NFG-1 PLAN
8-10-16 [[59](#)]

33. [15-22253](#)-D-13 SEAN DAVIS MOTION TO MODIFY PLAN
CJY-2 10-6-16 [[29](#)]

Final ruling:

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

34. [16-25055](#)-D-13 HANK WALTH
HWW-2

MOTION TO CONFIRM PLAN
10-14-16 [[22](#)]

Final ruling:

This is the debtor's motion to confirm a chapter 13 plan. The motion will be denied because there is no proof of service on file. The motion will be denied by minute order. No appearance is necessary.

35. [11-38356](#)-D-13 CRAIG FULLARD
DCJ-4

OBJECTION TO CLAIM OF SAN
JOAQUIN COUNTY TAX COLLECTOR,
CLAIM NUMBER 11
10-23-16 [[63](#)]

Tentative ruling:

This is the debtor's objection to the claim of the San Joaquin County Tax Collector, Claim No. 11 on the court's claims register. The objection was noticed pursuant to LBR 3007-1(b)(2); thus, the court will entertain opposition, if any, at the hearing. For the guidance of the parties, the court issues this tentative ruling.

The claim is for a total of \$36,316.82. Attached to the proof of claim is a copy of the Notice of Chapter 13 Bankruptcy Case filed in this case, at the bottom of which is a list of what appear to be four assessor's parcel numbers: 248-350-44, 250-270-38, 990-376-825, and 991-376-825. The claim does not break down the claim amount among the four parcels and does not give ownership or any other information for the four parcels. The debtor does not dispute the portion of the claim attributable to parcel number 250-270-38, as that is the parcel number of the debtor's real property. The debtor requests the court disallow the portions of the claim that relate to parcel numbers 248-350-44, 990-376-825, and 991-376-825. However, the debtor does not suggest what portion of the claim is properly attributable to parcel number 250-270-38. The court has examined the court file and finds that the debtor scheduled the Tax Collector as being owed \$23,835 for taxes on that parcel; however, the debtor's confirmed plan provides for a claim in the amount of \$24,800. The court will assume the debtor does not dispute the claim to the extent of \$24,800, and will allow the claim in at least that amount, depending on the response, if any, of the Tax Collector.

The court will hear the matter.

36. [15-28557](#)-D-13 TOMAS CARRILLO
JM-1

MOTION TO MODIFY PLAN
10-3-16 [[30](#)]

Final ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The trustee opposed the motion on the ground the moving party had failed to file the proposed plan as a separate document, as required by LBR 3015-1(d)(2), instead attaching a copy to the motion. On November 8, 2016, the moving party filed a new motion to confirm the proposed plan and set it for hearing on January 17, 2017. As a result of the filing of that motion, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

37. [15-20362](#)-D-13 MANUEL/IRENE ALVAREZ MOTION TO MODIFY PLAN
CJY-2 10-20-16 [[53](#)]

Final ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The motion will be denied because the moving parties failed to serve the IRS, listed on their Schedule E, and failed to serve any of the creditors listed on their Schedule F. Thus, the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b).

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

38. [16-24968](#)-D-13 SHERON NOR WOO CONTINUED OBJECTION TO
RDW-1 CONFIRMATION OF PLAN BY CAM IX
TRUST
9-28-16 [[25](#)]

Final ruling:

This is the objection of CAM IX Trust to confirmation of the debtor's proposed chapter 13 plan. The hearing was continued to permit the debtor to file opposition. Instead, on November 1, 2016, the debtor filed an amended plan and a motion to confirm it, set for hearing on December 13, 2016. On November 16, 2016, the debtor filed a notice in which she purported to withdraw her original plan. The notice does not operate as a withdrawal of CAM IX Trust's objection to confirmation, but it does evidence the debtor's intention not to oppose the objection. Therefore, the court will sustain the objection and consider the debtor's amended plan in due course. The objection will be sustained by minute order. No appearance is necessary.

39. [16-24370](#)-D-13 ROSARY SOTELLO MOTION TO CONFIRM PLAN
TOG-1 9-21-16 [[22](#)]

40. [12-25179](#)-D-13 LARRY/CARRIE STAMPER MOTION TO MODIFY PLAN
JCK-9 10-21-16 [[128](#)]

41. [13-33384](#)-D-13 JANICE WALTON-BOWEN MOTION TO SELL
JCK-2 10-28-16 [[30](#)]
42. [14-23584](#)-D-13 VICTOR CASTRO-TORRES MOTION TO MODIFY PLAN
JCK-1 10-24-16 [[52](#)]
43. [16-23684](#)-D-13 JESUS/TERESA LOPEZ CONTINUED MOTION FOR RELIEF
SBM-1 FROM AUTOMATIC STAY
WELL FARGO BANK, N.A. VS. 10-14-16 [[32](#)]
44. [15-27287](#)-D-13 GINA TOSCANO MOTION TO MODIFY PLAN
PGM-3 9-30-16 [[52](#)]

Final ruling:

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

Tentative ruling:

This is the debtor's motion to value collateral of Trojan Capital Investment LLC ("Trojan"); namely, a second position deed of trust against the debtor's residence. Trojan has filed opposition and the debtor has filed a reply. In addition, the hearing was continued to permit Trojan to supplement the record, which it has not done. For the following reasons, the court intends to grant the motion.

In support of the motion, the debtor submitted her own declaration, in which she testified she believes the fair market value of the property did not exceed \$395,000 as of the date of filing (August 24, 2016). She stated the balance owed on the senior deed of trust, in favor of Nationstar Mortgage, is approximately \$431,000. In its opposition, Trojan (1) contested the debtor's valuation of the property and requested time to obtain an appraisal; and (2) questioned the balance owed on the senior lien. Trojan believed that, as the debtor has the burden of proof on the motion, she should be required to provide a payoff as of the petition date unless the senior lienholder files a proof of claim. (It has not.) Trojan added it believes the underlying loan was modified and the balance owed may be less than alleged by the debtor. Finally, Trojan requested that any order granting the motion include several protections for Trojan, including that the lien avoidance is contingent on the debtor's completion of the plan and receipt of a discharge, and so on.

In reply to the opposition, the debtor filed a supplemental declaration in which she addressed both the value of the property and the amount due on the senior lien. Based on a preliminary title report and copies of the first pages of the two deeds of trust, attached to the debtor's declaration as exhibits, it is clear Nationstar's lien is in first position. The debtor also submitted a copy of a mortgage payoff statement from Nationstar dated July 27, 2016 listing the total amount due to pay the loan in full as \$431,869.92. The court is satisfied from this evidence that the balance due on the loan is as stated.

As regards the value of the property, the debtor states in her supplemental declaration that a substantially similar house recently closed for the amount at which she values her house; that her house backs up onto railroad tracks, which adversely affects its value; and that the house was briefly listed at \$375,000 and the only offer was as a short sale, for \$330,000. Based on this evidence, it appears there is no value in the property to secure Trojan's second position deed of trust. The court gave Trojan time to obtain an appraisal, which it has not done. Accordingly, the motion will be granted and Trojan's secured claim will be valued at \$0.00. No further relief will be afforded. (It is not the court's practice to include in orders granting motions to value collateral the various extra provisions requested by Trojan as they are unnecessary.) The debtor is to submit a proposed order.

The court will hear the matter.

46. [16-25587](#)-D-13 MARICELA LEON
MMS-2

MOTION TO CONFIRM PLAN
10-24-16 [[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; (2) the proof of service describes documents "filed on 9/6/16" whereas the motion was filed October 24, 2016; (3) assuming the documents served were those filed October 24, 2016, the moving party served the motion, notice of hearing, and supporting declaration, but not the plan itself, as required by LBR 3015-1(d) (1); and (4) the moving party failed to serve Claudia Leon, listed on the debtor's Schedule H as a co-debtor on the debtor's mortgage. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes parties who are co-debtors with the debtor.

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

47. [16-25687](#)-D-13 JAYAPRAKASH/ASHA VENGALIL
APN-1

OBJECTION TO CONFIRMATION OF
PLAN BY CAPITAL ONE AUTO
FINANCE
10-11-16 [[16](#)]

48. [15-27290](#)-D-13 ALBERT/MARY HAYNES
JGL-3

MOTION TO MODIFY PLAN
10-3-16 [[54](#)]

49. [14-30095](#)-D-13 SHEILA TERRY MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY AND/OR MOTION
CITIMORTGAGE, INC. VS. FOR RELIEF FROM CO-DEBTOR STAY
10-24-16 [[94](#)]

Final ruling:

This matter is resolved without oral argument. This is Citimortgage, Inc.'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 as to the debtor and any co-debtor by minute order. There will be no further relief afforded. No appearance is necessary.

50. [13-33096](#)-D-13 OSCAR/LIGIA GARZON MOTION TO MODIFY PLAN
MSN-1 10-18-16 [[33](#)]

Tentative ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The court is not prepared to rule on the motion because the proof of service is not signed. If a corrected proof of service has been filed and is on the court's docket by the time of the hearing, the court will grant the motion. If a corrected proof of service is not on file, the motion will be denied. The court will hear the matter.

51. [14-20996](#)-D-13 FRANCISCO/MARIA PADILLA CONTINUED MOTION TO MODIFY PLAN
PGM-3 8-4-16 [[106](#)]

52. [14-30697](#)-D-13 CAROLE PETERSEN MOTION TO INCUR DEBT
PGM-5 10-17-16 [[209](#)]

53. [14-30697](#)-D-13 CAROLE PETERSEN CONTINUED MOTION TO RECONVERT
RDG-3 CASE TO CHAPTER 7
10-4-16 [[204](#)]

54. [16-24397](#)-D-13 ABBIE IBRAHIM MOTION TO CONFIRM PLAN
DVD-1 9-16-16 [[19](#)]

Final ruling:

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

55. [16-24610](#)-D-13 ARMANDO COVARRUBIAS MOTION TO VALUE COLLATERAL OF
TOG-3 BMO HARRIS BANK, N.A.
11-11-16 [[65](#)]

56. [16-26221](#)-D-13 GREGORY GROSS AND RETTA OBJECTION TO CONFIRMATION OF
RDG-3 GIRLEY-GROSS PLAN BY RUSSELL D. GREER
11-7-16 [[25](#)]

57. [16-26623](#)-D-13 LEZLI STOWERS MOTION TO DISMISS CASE
RDG-1 11-7-16 [[14](#)]
58. [11-45424](#)-D-13 JOHN/KELLY CORTEZ MOTION FOR EXEMPTION FROM
MSN-1 FINANCIAL MANAGEMENT COURSE
AND/OR MOTION TO EXCUSE DEBTOR
KELLY LYNN CORTEZ FROM
COMPLETING THE 11 U.S.C.
SECTION 1328 CERTIFICATE AND
CERTIFICATE OF CHAPTER 13
DEBTOR REGARDING 11 U.S.C.
SECTION 522(Q) EXEMPTIONS
11-15-16 [[75](#)]
59. [11-45424](#)-D-13 JOHN/KELLY CORTEZ MOTION TO SUBSTITUTE JOHN
MSN-2 MINORU CORTEZ AS THE
REPRESENTATIVE FOR KELLY LYNN
CORTEZ
11-15-16 [[80](#)]
60. [11-38930](#)-D-13 MICHAEL/SUMMER MEYER MOTION TO VALUE COLLATERAL OF
CJY-2 JP MORGAN CHASE BANK, N.A.
11-9-16 [[64](#)]

61. [16-25832](#)-D-13 TIMOTHY HOSKER AND MOTION TO INCUR DEBT
MJD-2 CRYSTAL HOSKER-STARR 11-14-16 [[27](#)]
62. [16-26239](#)-D-13 DEREK BURGESS OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
11-7-16 [[23](#)]
63. [16-26239](#)-D-13 DEREK BURGESS OBJECTION TO CONFIRMATION OF
ETL-1 PLAN BY WELLS FARGO BANK, N.A.
11-7-16 [[26](#)]
64. [11-47748](#)-D-13 JUSTIN/MARIA LASSITER MOTION TO AVOID LIEN OF
CJY-2 SUNSTATE EQUIPMENT CO., LLC
11-14-16 [[53](#)]

65. [16-25055](#)-D-13 HANK WALTH MOTION TO VALUE COLLATERAL OF
HWW-3 BEST BUY CREDIT SERVICES
11-15-16 [[29](#)]
66. [16-25055](#)-D-13 HANK WALTH MOTION TO AVOID LIEN OF
HWW-4 COMMERCIAL TRADE, INC.
11-15-16 [[32](#)]
67. [16-25055](#)-D-13 HANK WALTH MOTION TO AVOID LIEN OF TD BANK
HWW-5 USA, N.A.
11-15-16 [[36](#)]
68. [16-26255](#)-D-13 DANIEL MARTINEZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
11-7-16 [[22](#)]

69. [16-26262](#)-D-13 CHANTAE JACKSON
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
11-7-16 [[23](#)]

70. [16-26264](#)-D-13 PATRICIA BROWN
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
11-7-16 [[21](#)]

71. [16-24977](#)-D-13 JOSHUA/TONI HIATT
CJY-2

MOTION TO VALUE COLLATERAL OF
MERCHANT CAPITAL GROUP, LLC
11-11-16 [[27](#)]

Tentative ruling:

This is the debtors' motion to value collateral of Merchant Capital Group, LLC, dba Greenbox Capital ("Greenbox"). The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has a preliminary concern.

The motion states that Greenbox's collateral is the debtors' personal property and that Greenbox's lien is subordinate to tax liens of the IRS and EDD that exceed in amount the value of the debtors' personal property. According to the debtors' Schedule D, Greenbox is owed \$4,793, secured by the assets of the debtors' sole proprietorship, Hiatt Alarm and Sound, valued at \$88,200. The debtors' Schedule D indicates the debt was incurred in 2015 but it does not say when in 2015.

According to the IRS's proof of claim, the claim is secured by tax liens recorded in 2007 and 2008; thus, the IRS's lien is senior to Greenbox's. The amount of the IRS's secured claim is \$109,503 and the value of the debtors' personal property is \$109,863, including the value of their business and excluding the value of an over-encumbered vehicle. The debtors failed to state on their Schedule D (or in their declaration) when their debt to the EDD was incurred and the EDD has not filed a claim. In any event, however, the IRS's tax lien secures a debt that encumbers all but \$360 of the value of the debtors' personal property.

The court's concern is that the debtors have failed to indicate whether their debt to Greenbox was incurred within the year prior to their filing of this case (the case was filed July 29, 2016 and the debtors have indicated only that the debt was incurred in 2015) or whether the debt is secured by a purchase money security interest in any of the assets of the debtors' business or any other thing of value. If the debt is secured by a purchase money security interest and was incurred within the one-year period, the debtors would be precluded from valuing the secured claim by the "hanging paragraph" in § 1325(a) of the Code. The debtors will need to confirm by admissible evidence sufficient facts to permit the court to conclude that the hanging paragraph does not apply.

The court will hear the matter.

72. [16-26179](#)-D-13 RICHARD/TWAN WILLIAMS OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
11-7-16 [[21](#)]
73. [16-27397](#)-D-13 YOLANDA BURGIN MOTION TO EXTEND AUTOMATIC STAY
PGM-1 11-11-16 [[10](#)]
74. [16-26098](#)-D-13 PAUL RODRIGUES OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
11-7-16 [[12](#)]