

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

December 17, 2013 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

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

1.	13-91302 -D-13	ALLAN/GINGER CRUZ	MOTION TO CONFIRM PLAN
	PLG-1		10-17-13 [37]

Final ruling:

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

2.	10-94704 -D-13	NANCY CANNON	MOTION TO MODIFY PLAN
	CJY-07		11-12-13 [112]

3. [13-91816](#)-D-13 OSCAR/FELICIA ACOSTA
PLG-1

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

Tentative ruling:

This is the debtors' motion to extend the automatic stay pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The hearing was continued to allow the debtors to submit supplemental evidence, which they have done. For the following reasons, the motion will be denied.

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

In light of the debtors' Schedules I and J in this case and the prior case, of which the court takes judicial notice, and considering that the trustee has filed a motion to dismiss this new case because the debtors are in default of their plan payments by \$1,026, the debtors' original and supplemental declarations are insufficient to rebut, by clear and convincing evidence, the presumption that this case was not filed in good faith, as required by § 362(c)(3)(C). In the prior case, the debtors' schedules indicated they had both been employed in their present positions for some time - the debtor for one and one-half years and the joint debtor for 27 years. Their combined net income was \$8,411. They were significantly above the median income for their household size; according to their Form 22C, their monthly disposable income was \$3,907. Their budget included generous deductions for household expenses, including \$1,200 per month for food for their family of four, which included the debtors and their 17- and 18-year old daughter and son, a \$250 per month "contingency," \$200 per month for personal care and grooming, and \$450 per month for after school activities and supplies for their children. Even with these generous deductions, they had \$2,104 left each month, sufficient to cover their plan payment, \$2,070.

Despite these generous expense allowances, the debtors fell behind in the first case when they failed to make any plan payment at all in months 5 and 6 of the plan - May and June of 2012. The debtors state in their supplemental declaration they contacted the trustee in August of 2012 to find out how much they needed to pay to become current; after speaking with the trustee, they believed they had the ability to get caught up, and in fact, thought they were caught up.¹ However, they state they miscalculated the due date of their plan payments, and thus, were always one month behind on their payments for the next year, although did not miss any more payments. In fact, the trustee's notices of default filed in the prior case, DNs

19, 23, 25, and 27, show that through May of 2013, the debtors were consistently two months behind. Given that the first three notices of default were served on the debtors in the summer and fall of 2012, and given that all of them advised the debtors they were behind by more than \$4,000, it is difficult to believe the debtors actually thought they were caught up.²

The debtors add that in July of 2013, they "became victims of mortgage loan modification fraud" (Debtors' Decl., filed Nov. 19, 2013, at 2:17-18), in which they were told they could obtain a loan modification as well as a principal reduction, whereas after they had made a couple of trial payments, the company they were working with (not their lender) stopped contacting them, and they discovered they had been victims of a scam. They state that at that point, "[they] were not able to fully get caught up with [their] plan payments." Id. at 2:25-26. (Vehicle repair costs of \$1,600 also played into that scenario.) The court has difficulty understanding how the alleged loan modification scam had anything to do with the debtors remaining two months behind in their plan payments, falling almost three months behind by June of 2013 (\$5,920 by June 5, 2013 - see DN 27 in prior case), and then falling five and one-quarter months behind by September 12, 2013 (see DN 31 in prior case). The debtors were presumably making a lower mortgage payment during the trial payment period (they claim they thought they were current with the mortgage payments, but later learned they were not), but even if they were not making a lower payment, the debtors have not explained how the loan modification scam affected their cash flow so as to cause them to be unable to catch up with their missed plan payments, and then to fall farther and farther behind.

The debtors' Form 22C and Schedules I and J in this new case are similar to those in the prior case. The debtors continue to be well above median income; their Form 22C shows \$4,552 per month in monthly disposable income. They are both still employed in the same jobs, although they now have higher income, \$9,343 per month after taxes and other deductions. Their children are now adults - ages 19 and 20, respectively. The debtors have increased their home maintenance expense to \$500, their food expense to \$1,400, and their unexplained "contingency" to \$600, and have continued to budget \$450 per month for "expenses for children," although their children, as indicated, are adults. (The debtors have only \$1,572 in unsecured debt; they are proposing a 100% plan.) Even with these generous deductions, the debtors have \$2,236 in monthly net income, sufficient to cover their plan payment of \$2,126. Yet according to the trustee's motion to dismiss this new case, the debtors failed to pay the full amount of their first plan payment, and thus, are already in default by \$1,026.

The court concludes that the debtors have failed to show there has been a substantial change in their financial or personal affairs since the dismissal of the prior case or any other reason to conclude that the present case will be concluded with a confirmed plan that will be fully performed. Thus, the debtors have failed to rebut by clear and convincing evidence the presumption that this case was not filed in good faith.

The court will hear the matter.

1 The debtors have offered no explanation fo why they failed to make the May and June plan payments in the first place.

2 The trustee's third notice of default, which was served November 10, 2012, advised the debtors they were behind by \$4,110.

4. [11-94318](#)-D-13 MICHAEL/KAREN CORNELIUS CONTINUED MOTION TO MODIFY PLAN
JAD-3 10-23-13 [[54](#)]

Final ruling:

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

5. [10-94622](#)-D-13 JOSE/ABIGAIL ROSAS MOTION TO MODIFY PLAN
CJY-1 11-12-13 [[34](#)]

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.

6. [13-91024](#)-D-13 BRUCE VELTHOEN MOTION TO CONFIRM PLAN
BSH-10 11-5-13 [[126](#)]

Tentative ruling:

This is the debtor's motion to confirm a fifth amended chapter 13 plan. No opposition to the motion has been filed. However, the court is not prepared to grant the motion at this time because the plan provides for the claim of CitiMortgage, secured by a second position deed of trust against the debtor's

property, at \$0, whereas on October 24, 2013, the court denied the debtor's motion to value the collateral securing that claim, and the debtor has failed to file a new motion to value. Thus, the plan is not in compliance with LBR 3015-1(j), and may not be feasible.

For this reason, the court will deny the motion. In the alternative, the court will continue the hearing to allow the debtor to file a motion to value the collateral of CitiMortgage. The court will hear the matter.

7. [13-91825](#)-D-13 ANGEL/TABATHA GARCIA MOTION TO VALUE COLLATERAL OF
LRR-1 WELLS FARGO HOME MORTGAGE
10-23-13 [[10](#)]

8. [13-92025](#)-D-13 RAFAEL/MARIA LOPEZ MOTION TO VALUE COLLATERAL OF
TOG-1 BANK OF AMERICA, N.A.
11-15-13 [[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.

9. [13-90327](#)-D-13 TORIBIO TORRES AND CONTINUED MOTION TO VALUE
TOG-5 BEATRIZ ROCHEL COLLATERAL OF POINTS WEST
FINANCIAL GROUP SPE, LLC
10-7-13 [[101](#)]

Tentative ruling:

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

The court issued a tentative ruling in connection with the original hearing on this matter; because that ruling covers some issues that need not be further addressed here, the court adopts that ruling here in full. The ruling is to be found on the court's docket as DN 123. The sole remaining issue was the value of the property, as to which, at that time, Points West had submitted only a hearsay broker's price opinion, as contrasted with the debtors, who had submitted a formal appraisal authenticated by the appraiser's declaration. The hearing was continued to allow Points West to supplement the record, which it has now done. Points West has submitted a declaration of Linda Stewart, a real estate broker who has been in the "sale, appraisal and valuation of residential real estate for over 13 years." L. Stewart Decl., filed Dec. 9, 2013, at 3:6-7. Ms. Stewart testifies that "[b]ased upon [her] review and evaluation of the Property, comparable sales and other relevant factors, in [her] opinion the fair market value of the Property on February 25, 2013 [the petition date] was \$70,000.00." *Id.* at 3:13-16. Attached to Ms. Stewart's declaration is a report listing the comparables she relied on. Three of those comparables were sales; three are listings. For all six comparables, Ms. Stewart provided the sales or listing price, the price per square foot, the site size, the age, the number of bedrooms and baths, the square footage of the gross living area, and a few other details. However, she did not make any adjustments to the prices of any of the six comparables based on differences between the subject property and the comparable property.

By contrast, the debtors' appraiser, John Friend, is a licensed real estate appraiser. Mr. Friend used six comparables (all different from those chosen by Ms. Stewart), four of which were sales, one is a pending sale, and one is a listing. For all six of his comparables, Mr. Friend provided adjustments for differences, along with comments on his adjustments and a detailed description of the neighborhood, the subject property, and the condition of its improvements. Based on the difference between their apparent qualifications - a licensed appraiser as opposed to a broker, and on the level of detail provided by each as to their comparables, the court gives greater weight to Mr. Friend's appraisal, and as such, finds the value of the property to be \$53,000. The court concludes that Points West has a secured claim in the amount of \$53,000, and an unsecured claim in the amount of \$128,411.87. (The court bases the amount of the unsecured claim on Points West's proof of claim filed April 4, 2013, Claim No. 2 on the court's claims register.)

The court will hear the matter.

Final ruling:

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

11. [13-91828](#)-D-13 THOMAS/JOCELYN OWENS MOTION TO VALUE COLLATERAL OF
TPH-2 CITIFINANCIAL SERVICING LLC
11-6-13 [[20](#)]

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.

12. [11-92932](#)-D-13 JEREMY/KONI LINN MOTION TO VALUE COLLATERAL OF
JDP-1 KEY BANK, N.A.
11-14-13 [[46](#)]

Final ruling:

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

13. [13-91638](#)-D-13 SHAWNTE PRIEST OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
11-1-13 [[18](#)]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The trustee objected on the basis that the debtor had failed to file a spousal waiver for use of the Cal. Code Civ. Proc. § 703.140(b)(5) exemptions. On November 19, 2013, the debtor filed a spousal waiver in the appropriate form that was signed by both the debtor and her spouse. As a result, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

14. [11-90740](#)-D-13 ROBERT/DEBRA WILDING CONTINUED MOTION TO INCUR DEBT
CJY-2 11-4-13 [[33](#)]

15. [13-91543](#)-D-13 SEAN AMIN MOTION TO CONFIRM PLAN
DCJ-2 11-5-13 [[23](#)]

Final ruling:

This is the debtor's motion to confirm a chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve Gabe Solomon, listed on the debtor's Schedule G as a tenant, through August 2014, of the debtor's commercial property;¹ (2) the moving party failed to serve the other unnamed tenant who is described as being on a month-to-month basis;² and (3) the plan provides for the secured claim of the U.S. Small Business Administration in the amount of \$0, whereas the debtor has failed to obtain an order valuing that claim, as required by LBR 3015-1(j). For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

1 As an aside, the court notes that the debtor's schedules and statement of financial affairs provide conflicting information regarding the debtor's interest in this property. Schedule G states that the debtors owns 50% of the property, whereas the statement of affairs, question 18, indicates the property was formerly owned 50/50 with the debtor's brother, but the debtor now owns 100% of the property.

2 The debtor was required to list Gabe Solomon on his master address list (Fed. R. Bankr. P. 1007(a)(1)), which he did not do, and given the very broad definitions of "creditor" and "claim" under the Bankruptcy Code (§ 101(5) and (10)), both Gabe Solomon and the other tenant were required to be served with this motion, under Fed. R. Bankr. P. 2002(b).

16. [13-91744](#)-D-13 RICARDO MORALES OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
11-15-13 [[16](#)]

17. [13-91847](#)-D-13 JOEL/LAURA PHELAN MOTION TO VALUE COLLATERAL OF
DWC-1 ONEWEST BANK, FSB
11-18-13 [[22](#)]

Final ruling:

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

18. [13-92052](#)-D-13 RALPH KLAUSER MOTION TO EXTEND AUTOMATIC STAY
MRP-1 11-18-13 [[7](#)]

19. [11-90256](#)-D-13 LOUIS/LYNDA SILVIA MOTION TO APPROVE SHORT SELL
JBR-5 11-5-13 [[64](#)]

20. [10-92558](#)-D-13 MARIA CIBRIAN MOTION TO VALUE COLLATERAL OF
JDP-1 BANK OF AMERICA, N.A.
11-6-13 [[88](#)]

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.

21. [11-93974](#)-D-13 DANIEL/SANDRA TANNER MOTION TO MODIFY PLAN
CJY-2 11-5-13 [[51](#)]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge

an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

22. [13-91975](#)-D-13 ANDRES/IRMA SEPULVEDA MOTION TO VALUE COLLATERAL OF
TOG-1 BANK OF AMERICA, N.A.
11-8-13 [[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.

23. [10-90177](#)-D-13 EDWARD/JENNIFER WATSON MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY AND/OR MOTION
OCWEN LOAN SERVICING, LLC FOR ADEQUATE PROTECTION
VS. 11-18-13 [[107](#)]

Final ruling:

This matter is resolved without oral argument. This is OCWEN Loan Servicing, 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.

24. [13-91078](#)-D-13 DAVID/JENNIFER VOLFI MOTION TO CONFIRM PLAN
BSH-5 11-5-13 [[51](#)]

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.

25. [13-91078](#)-D-13 DAVID/JENNIFER VOLFI MOTION TO VALUE COLLATERAL OF
BSH-6 CAPITAL ONE BANK, (USA), N.A.
11-6-13 [[59](#)]

Final ruling:

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

26. [13-91482](#)-D-13 CHRISTOPHER KAPPMEYER OBJECTION TO DEBTOR'S CLAIM OF
RDG-4 EXEMPTIONS
11-8-13 [[41](#)]

Tentative ruling:

The trustee has objected to the debtor's claim of exemption of \$5,000 worth of softball equipment as tools of the trade, on the ground that the debtor has obtained new employment in construction, and is no longer self-employed as a softball promoter. The debtor has responded that he will file an amended schedule of exemptions to claim the softball equipment as exempt under the wild-card exemption. However, as of this date, he has not done so. The court finds that the trustee's objection is well-taken, and the objection will be sustained.

The court will hear the matter.

Tentative ruling:

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

Inaccuracies on the debtors' schedules, together with their borrowing of \$12,000 from Mr. Watson's 457 plan in July of 2012, for which they did not seek court approval until September of this year, have caused and continue to cause confusion in this case, which has not been cleared up by the debtors' response. Most significant, although the debtors' original and amended Schedules I show a significant increase in Mr. Watson's income - from \$8,736 to \$9,856, an increase of \$1,120, the debtors claim his income has actually decreased - from \$11,135 to \$9,856, a decrease of \$1,279, since the filing of this case. The debtors' explanation is that their original Schedule I was not accurate, but their original Form 22C was.¹ An amended Form 22C filed July 31, 2013 and an amended Schedule I filed the same day show his income as of July 31, 2013 as \$9,856.² Thus, the debtors claim, his income has decreased since the filing; it has not increased, as the original and amended Schedules I show.

In other words, the original Schedule I, which was supposed to reflect Mr. Watson's then current income, actually understated it by \$2,399; that is, the schedule should have shown \$11,135, not \$8,736.³ According to the debtors, his income has since dropped from \$11,135 to \$9,856. The debtors have not explained (1) why they listed his income on the original Schedule I as \$2,399 lower than it was; or (2) at what time or times his income decreased. The court concludes, therefore, that for at least some portion of the post-petition period, presumably the first three years (since the debtors waited that long to file their amended schedules), they enjoyed income that was \$2,399 higher than they had reported on their Schedule I.

If the debtors are to be believed, even that income was insufficient to meet their needs, as they found it necessary, in July 2012, to borrow \$12,000 from Mr. Watson's 457 plan in order to make ends meet, which resulted in his increasing the payment on his original 457 loan by \$717 per month (from \$579 to \$1,296). For this they did not seek court approval until 14 months later, in September 2013. In the interim, one year later, in July 2013, the debtors sought approval of a mortgage loan modification that would save them \$627 per month. At that time, they did not mention the \$12,000 they had borrowed in July 2012, they did not file amended schedules to reflect the \$717 per month increase in their 457 loan payment, and they did not mention the alleged decrease in Mr. Watson's income. In a tentative ruling on the motion to approve the mortgage loan modification, the court noted that, although the debtors stated in their supporting declaration they had had difficulty making their plan payment, they also testified that their plan was not in default; in other words, the debtors had been able to afford the \$741 plan payment, yet they were not proposing to share any of their new mortgage savings with their creditors.

The court heard the matter and continued the hearing. The debtors then filed their amended Schedule I, disclosing for the first time the \$717 increase in the 457 loan payment, which they had by then been making for a full year, while still keeping their plan payments current. They also filed an amended Schedule J and a

modified plan, in which they proposed to increase their plan payment by \$209 (from \$741 to \$950). The trustee objected, noting that according to the original and amended Schedules I, Mr. Watson's income had increased by \$1,120 per month, and the debtors had increased the 457 loan payment by \$717 per month without obtaining court approval to incur debt. The trustee concluded that because of the unexplained increase in the 457 loan payment and the proposal to share only \$209 of their increased income and mortgage savings with creditors, the plan was not proposed in good faith. The court agreed, and the motion was denied.

The debtors then filed the present motion, which is essentially the same as the one just denied, except that, as a result of correcting the amount of the new mortgage payment to include taxes and insurance (which they had inadvertently omitted from their July 31, 2013 amended Schedule J), and due to a couple of other minor changes in their expenses, the debtors now propose to increase their plan payment to \$753, an increase of only \$12 per month, as compared with the significant amount the debtors are enjoying as a result of the mortgage loan modification that has now been approved, \$627, and the very sizeable unreported income they enjoyed during the first three years of the case, apparently \$2,399 per month, which the debtors have failed to account for.

The debtors' response to the trustee's opposition compounds the confusion. The response states that the original and amended Forms 22C "accurately reflect[] the Debtor's reduction in income since the Chapter 13 was filed in July of 2010." Resp. at 2:14-15. They have multiplied Mr. Watson's gross monthly income, as shown on the two Forms 22C, by 12 months, arriving at annual figures of \$133,622 at the beginning of the case and \$118,276 three years later, a reduction of \$15,346. The response also refers to a 3% pay cut. By contrast, the debtors' declaration supporting the motion refers to a 9% pay cut, and states that Mr. Watson is making approximately \$50,000 less per year.

From the foregoing, the court finds that the debtors' original Schedule I was inaccurate by a significant amount, approximately \$2,400 per month; that the debtors have failed to explain why it was inaccurate or how they spent the unreported income; that neither the alleged decrease in income nor the increase in the 457 loan payment surfaced until after the court indicated it did not intend to approve a loan modification that would save the debtors \$627 per month with no proposal to share any of the savings with creditors; that the court still has no idea when or in what increments the alleged decrease in income occurred; that the debtors contractually and in writing obligated themselves not to incur new debt exceeding \$1,000 without first obtaining court approval, but did so anyway, borrowing \$12,000 from Mr. Watson's 457 plan; that when they did so, they knew they were incurring an additional monthly expense of \$717, almost as much as their plan payment; that nevertheless, they were thereafter able to continue making the \$741 plan payment for the next year; that they have enjoyed a significant savings in their mortgage expense, \$627, while proposing to share none of it with creditors; and that the explanations in their supporting declaration and their response to the trustee's opposition are self-serving and confusing.

The court has attempted to make sense of the inconsistencies in the debtors' schedules and statements, which they signed under oath and which were supposed to be accurate and complete. However, neither the trustee nor the court has the wherewithal to do a forensic accounting on every debtor's schedules and statements. The court can do the math in comparing figures on filed schedules; it has no ability, however, to determine the accuracy of the debtors' reported household expenses. For this reason, and primarily because it is the quid pro quo for the

benefits a debtor seeks in bankruptcy, a debtor must file true, complete, and accurate schedules. In this case, given the debtors' inaccurate reporting on their original Schedule I, the court has no reason to give them the benefit of the doubt at this stage. What the court does know is that the debtors were able to remain current on their plan payments despite the \$717 increase in the 457 loan payment, and that they now enjoy a savings of \$627 per month on their mortgage payment. At this point and on this record, the court is not likely to confirm any modified plan unless a substantial portion of those savings goes to creditors.

Finally, the debtors have attached to their response a summary apparently printed from the trustee's website that shows "total allowed debt" as \$26,167 and total receipts of \$29,843, from which the debtors conclude they have "already funded the vast majority of allowed claims." Resp. at 4:8. The court needs an explanation of the \$26,167 figure from the trustee, given that timely filed unsecured claims appear to total \$37,404, the figure also listed on the trustee's Notice of Filed Claims.

For the reasons stated, the court concludes that the plan has not been proposed in good faith, and the motion will be denied.⁴ The court will hear the matter.

1 As they phrase it:

The originally filed Schedule I and the amended Schedule I reflect the Debtor's income for the months prior to filing which is subject to overtime while a more accurate depiction of the Debtor's financial situation and reduction in income as declared by the Debtor's [sic] can be seen by reviewing the originally filed Form 22C and the amended Form 22C.

Debtors' Response, filed Dec. 10, 2013 ("Resp."), at 2:3-8.

2 Although the Form 22C is supposed to reflect the debtors' income during the six months prior to the filing of the case, the debtors' amended Form 22C is based on their income during the six months prior to July 31, 2013.

3 The debtors did indicate at the bottom of their original Schedule I that they anticipated changes within the next year due to a reduction in overtime hours, as well as expected budget cuts. However, the changes described at the bottom of Schedule I are supposed to be changes expected to occur in the next year, not changes already reflected in the figure at the top of Schedule I. If what the debtors are now saying is correct - that Mr. Watson's income has dropped to \$9,856 since the filing of the case, it was not \$8,736, the figure shown on their original Schedule I, at the time of filing. Thus, that number was inaccurate and misleading.

4 In support of their conclusion that the plan was proposed in good faith, the debtors point to an increase in the proposed dividend to unsecured creditors. This resulted solely from the fact that the court pointed out in its tentative ruling on the mortgage loan modification that the total of filed unsecured claims was only \$37,404, whereas the very low dividend in the debtors' confirmed plan was based on an estimate of \$355,381. When they increased the dividend in this new plan, the debtors were merely adjusting it in accordance with the court's earlier ruling.

28. [10-92783](#)-D-13 JAMES/ANGELA WATSON
TPH-9

MOTION TO INCUR DEBT
10-31-13 [[106](#)]

Tentative ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The motion was brought pursuant to LBR 9014-1(f)(2); thus, opposition, if any, will be entertained at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The debtors seek retroactive approval of their borrowing of \$12,000 from Mr. Watson's 457 plan in July of 2012. To repay the new loan, the debtors have added \$717 per month to the amount they were paying on an earlier 457 loan at the time they filed this case. In a tentative ruling on the debtors' motion to modify their chapter 13 plan, DC No. TPH-8 on this calendar, which the court incorporates herein by this reference, the court has found that the debtors' proposed modified plan has not been filed in good faith. The debtors' borrowing of an additional \$12,000 from the 457 plan in July 2012 plays a significant role in the court's decision on the motion to modify the plan. In short, the debtors have used the increase in their 457 loan payment, \$717, as part of their explanation why they cannot share any of the new savings from their mortgage loan modification with creditors. The court notes especially that the debtors failed to disclose the new borrowing or the increase in the 457 loan payment until after the court had tentatively decided to deny their motion to approve their mortgage loan modification. Further, given the debtors' failure to explain unreported income in an amount as high as \$2,399 per month for the first three years of the case, the court has an insufficient basis on which to determine that the new borrowing was necessary and reasonable.

The debtors explain in support of this motion what they did with the \$12,000 - they spent \$1,750 for orthodontia work, \$1,429 to service an air conditioning unit, \$769 for new tires, \$1,972 for truck repairs, and \$617 for a vehicle registration. The balance, \$5,500, was spent on school clothes for their three children and "everyday expenses for cost of living." Debtors' Decl., filed Oct. 31, 2013 ("Decl."), at 2:8. The court is not suggesting these were not reasonable expenditures; it simply finds the debtors have not shown the borrowing was necessary in order to pay them. That is, the debtors have failed to explain why they were unable to afford these items given their income as reflected on their original Form 22C, which they now claim accurately reflected Mr. Watson's income at the time of filing. It is significant that even after they took out the new loan and began paying \$717 per month toward its repayment, the debtors continued to be able to make their plan payment. This too calls into question whether the new loan was reasonable and necessary.

According to the debtors' most recent Schedules I and J, after deducting the \$717 payment on the new borrowing, the debtors are able to increase their plan payment by only \$12 per month, despite the fact that their recent mortgage loan modification affords them savings of \$627 per month. The court has found on the motion to modify the plan that the debtors have offered only belated self-serving

explanations of their failure to share those savings with their creditors; the court has concluded it would not likely confirm any plan that did not propose to share a substantial portion of those savings with creditors. Because the debtors claim the \$717 loan payment impairs their ability to share their mortgage savings with their creditors, the court will not approve the borrowing or the \$717 per month loan payment. The debtors state that if they do not repay the new 457 loan now, at \$717 per month, they "will be heavily tax[e]d and no longer will be able to contribute to [their] future retirement." Decl., at 3:11. That is a consequence of the choices the debtors have made - from understating their actual income by a significant amount on their original Schedule I to failing to report an alleged decrease in their income and failing to report the new borrowing until after the court declined to approve their mortgage loan modification.

For the reasons stated, the court concludes that the debtors have failed to demonstrate that the motion was filed in good faith, and the motion will be denied. The court will hear the matter.

29. [12-91089](#)-D-13 MARY DANIELSON
CJY-5

MOTION TO MODIFY PLAN
11-12-13 [[72](#)]

Final ruling:

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

30. [13-91789](#)-D-13 SHELLY MAX
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
11-15-13 [[23](#)]

31. [13-91790](#)-D-13 ROBERT HARRIS OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
11-15-13 [[22](#)]

Final ruling:

This case was dismissed on November 18, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

32. [11-94294](#)-D-13 CURTIS/TRACEY GREEN MOTION TO MODIFY PLAN
CJY-2 11-6-13 [[37](#)]

Final ruling:

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

33. [09-91495](#)-D-13 RODERICK/MARIE COUNTRYMAN MOTION TO SELL
CJY-1 11-20-13 [[176](#)]

34. [13-91804](#)-D-13 JEWEL MCCLENDON OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
11-22-13 [[14](#)]

35. [13-91805](#)-D-13 HOWARD/PAMELA KEMP OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
11-22-13 [[14](#)]
36. [13-91812](#)-D-13 DOUGLAS/KAREN METCALFE OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
11-26-13 [[21](#)]
37. [13-91815](#)-D-13 CARLOS CENDEJAS AND OBJECTION TO CONFIRMATION OF
RDG-1 LORENA VEGA PLAN BY RUSSELL D. GREER
11-22-13 [[26](#)]
38. [13-91817](#)-D-13 JASON/STEPHANY WALTON OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY CHAPTER 13 TRUSTEE,
RUSSELL D. GREER
11-22-13 [[16](#)]

39. [13-91822](#)-D-13 SCOTT/LYNNETTE DUNCAN OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
12-3-13 [[29](#)]
40. [13-91825](#)-D-13 ANGEL/TABATHA GARCIA OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
12-4-13 [[23](#)]
41. [13-90327](#)-D-13 TORIBIO TORRES AND CONTINUED MOTION TO CONFIRM
TOG-6 BEATRIZ ROCHEL PLAN
10-17-13 [[116](#)]
42. [13-91767](#)-D-13 EDWARD JONES OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
11-22-13 [[15](#)]

43. [13-91668](#)-D-13 LORENZO/LEONOR LAZARO OBJECTION TO CONFIRMATION OF
PPR-1 PLAN BY THE BANK OF NEW YORK
 MELLON
 11-26-13 [[41](#)]
44. [10-93478](#)-D-13 BRUCE/MARGARET TEMPLE MOTION TO APPROVE LOAN
CJY-2 MODIFICATION
 12-2-13 [[58](#)]
45. [12-90583](#)-D-13 GEORGE MUNOZ AND DIANE MOTION TO APPROVE LOAN
CJY-4 PARRA MODIFICATION
 12-3-13 [[62](#)]
46. [10-90063](#)-D-13 MARTHA CHAVEZ MOTION TO SELL O.S.T.
[13-9040](#) ASM-2 12-12-13 [[11](#)]
JIMENEZ ET AL V. CHAVEZ ET AL