

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Modesto, California

March 25, 2014 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.	13-91100-D-13	SCOTT/SARINA DUTEY	MOTION TO MODIFY PLAN
	JAD-1		2-6-14 [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 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.	14-90001-D-13	LENA BAKER	OBJECTION TO CONFIRMATION OF
	RDG-2		PLAN BY RUSSELL D. GREER
			2-24-14 [37]

3. 14-90002-D-13 GREGORY SCOTT  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GRER  
2-24-14 [26]

4. 11-94303-D-13 DAVID DOMINGUEZ AND  
CJY-3 MARTHA RUIZ-DOMINGUEZ

MOTION TO MODIFY PLAN  
2-18-14 [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. 13-92208-D-13 JUAN/MARISELA MEJIA  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
2-24-14 [21]

6. 09-91714-D-13 RITA ROSS  
JHW-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY

**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 relief from stay. As the debtor's Statement of Intentions indicates she will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

7. 08-92717-D-13 VIRGINIA ARCEO  
JDP-1

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
2-24-14 [93]

**Final ruling:**

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

8. 11-93117-D-13 TIMOTHY/MELISSA FAGNANI  
PPR-2

MOTION TO APPROVE LOAN  
MODIFICATION  
2-11-14 [39]

**Final ruling:**

This is a joint motion of Bayview Loan Servicing, LLC, and the debtors for an order permitting the debtors to enter into a loan modification agreement. The motion will be denied because the moving parties utilized the debtors' master address list as their service list, and thus, with one or two exceptions, failed to serve the creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g).

As a result of this service defect, the motion will be denied, and the court

need not consider the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

9. 13-90824-D-13 MATTHEW/CHARLENE GOMEZ MOTION TO MODIFY PLAN  
JCK-1 2-14-14 [23]

**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.

10. 13-92133-D-13 RICHARD/ALICIA AZEVEDO MOTION TO VALUE COLLATERAL OF  
SDM-2 MOCSE FCU  
2-13-14 [28]

**Final ruling:**

This is the debtors' motion to value collateral of MOCSE Federal Credit Union ("MOCSE"). The motion will be denied because the moving parties failed to serve MOCSE in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served MOCSE at a street address, but with no attention line, whereas the rule requires that a corporation be served to the attention of an officer, managing or general agent, or agent for service of process. Fed. R. Bankr. P. 7004(b)(3).

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

11. 13-91935-D-13 EMILIO REBOLLEDO AND MOTION TO CONFIRM PLAN  
TOG-2 MARIA FERNANDEZ 2-10-14 [39]

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties failed to serve several of the creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); (2) the moving parties failed to serve at least two creditors listed on their Schedule F, at all, as required by Fed. R. Bankr. P. 2002(b); and (3) the moving parties failed to serve the three creditors listed on their Schedule G, at all, as required by Fed. R. Bankr. P. 2002(b).

As a result of these service defects, the motion will be denied, and the court need not consider the objections raised by creditor Juan Segura Torres at this time. The motion will be denied by minute order. No appearance is necessary.

12.	09-90938-D-13	NEAL/MELINDA STOW	MOTION TO VALUE COLLATERAL OF
	JDP-2		JP MORGAN CHASE BANK, N.A.
			2-27-14 [60]

13.	10-94040-D-13	JEREMY/JOANNE GRIVETTE	MOTION TO INCUR DEBT
	JCK-2		2-17-14 [43]

**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 incur debt is supported by the record. As such the court will grant the motion to incur debt by minute order. No appearance is necessary.

14.	10-94040-D-13	JEREMY/JOANNE GRIVETTE	MOTION TO MODIFY PLAN
	JCK-3		2-17-14 [48]

**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.

15. 13-92140-D-13      ARTURO/MARISELA BARAJAS      MOTION TO CONFIRM PLAN  
CJY-1      2-4-14 [56]

**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.

16. 10-90042-D-13 GEORGE/KELLY CERNY MOTION TO MODIFY PLAN  
CJY-7 2-13-14 [104]

**Tentative ruling:**

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

The motion states that one of the purposes of the proposed modification is to reduce the amount of the debtors' plan payment so they can make direct payments to the IRS. The motion states that when the case was filed, the debtors listed the IRS as a priority creditor, but the IRS filed its claim late, and the trustee would not allow the debtors to pay the claim through the plan. "Now they have to pay the taxes outside the Plan. Debtors will be paying the IRS \$420.00 per month which is what they [the IRS] would have received through the Chapter 13 Plan, had a claim been filed." Debtors' Motion, filed Feb. 13, 2013, at 1:28-2:1. The debtors add that they have only 11 months remaining in their plan, and that unsecured creditors have already received more than what was originally expected.

The trustee contends the plan is not proposed in good faith. The trustee's opposition on this point is well stated, and the court adopts it as part of its findings and conclusions:

The Trustee objects to the debtors' use of the \$420.00 per month outside the plan. This money is being paid to the IRS to the detriment of the other unsecured creditors in this case. The Debtors are protected from collection by the automatic stay until the conclusion of this case in approximately 10 months. To pay the IRS outside the plan creates an "end

run" around the claims filing procedure with which both the creditor and the debtors failed to comply, and is unfair to those creditors which have filed timely claims.

Trustee's Opposition, filed March 7, 2014, at 1:19-24. The claims bar date in this case for governmental units was July 6, 2010. The IRS did not file a proof of claim until August 30, 2010. Also on August 30, 2010, the trustee filed and served his Notice of Filed Claims, in which he (1) reminded the debtors and their counsel of the relevant claims bar dates, including the one for governmental units; (2) informed them that the IRS had not filed a proof of claim; and (3) informed them that the debtors' deadline to file claims for creditors was October 29, 2010. The debtors did not file a proof of claim for the IRS. The debtors' proposal to pay on this late claim outside the plan is exactly what the trustee says it is - an end run around (1) the requirement that creditors file timely proofs of claim and that debtors file timely claims on behalf of creditors who fail to file their own timely claims, and (2) the rules providing that the court has no authority to allow a late claim, even in cases of excusable neglect. Permitting a debtor to make payments on a late claim directly, rather than through the plan, thereby reducing the amount other creditors will receive through the plan, would gut the rules requiring the timely filing of proofs of claim and providing that late claims are not allowable.

The trustee's second objection is that the debtors' confirmed plan requires plan payments of \$1,670 per month, that the debtors' most recent amended Schedules I and J show they have sufficient funds, after payment of their expenses, to pay \$1,022 per month into the plan (including the \$420 they propose to pay instead to the IRS), but that since July 2013, the debtors have been paying only \$270 per month into the plan, which has been sufficient to pay only the debtors' car payment and trustee compensation. The trustee adds that the amended Schedules I and J filed in July 2013 show funds sufficient to pay not just \$1,022 but \$1,403 per month.

The difference between those two figures appears to derive from the fact that debtor George Cerny is no longer receiving extra duty pay of \$375 per month. However, the debtors have not explained why they have been paying only \$270 per month since July 2013, when their schedules show they could have paid \$1,022 per month. The trustee asks that the debtors account for the difference, \$752 per month for a period of eight months, a total of \$6,023. The court agrees with the trustee that the debtors must account for the disposition of this excess income. Absent a satisfactory explanation, the debtors have failed to satisfy their burden of demonstrating that the plan has been proposed in good faith.

The court will hear the matter.

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1 See Gardenhire v. United States Internal Revenue Service (In re Gardenhire), 209 F.3d 1145, 1148 (9th Cir. 2000) ("a bankruptcy court lacks equitable discretion to enlarge the time to file proofs of claim; rather, it may only enlarge the filing time pursuant to the exceptions set forth in the Bankruptcy Code and Rules"); Coastal Alaska Lines, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.), 920 F.2d 1428, 1432-33 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists"); Dicker v. Dye (In re Edelman), 237 B.R. 146, 153 (9th Cir. BAP 1999) ["excusable neglect . . . does not apply to Rule 3002(c)."].

17. 13-91542-D-13 MICHAEL/JENNIFER CARVALHO MOTION TO MODIFY PLAN  
CJY-1 2-12-14 [25]

**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. 12-91246-D-13 BARRY/ELIZABETH WORTHAM MOTION TO MODIFY PLAN  
CJY-11 2-6-14 [150]

**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.

19. 09-94247-D-13 LAWRENCE/WENDY BOLDON MOTION TO MODIFY PLAN  
CJY-1 2-19-14 [209]

**Final ruling:**

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



20. 13-91947-D-13 CARLOS/RENEE SILVEIRA MOTION TO CONFIRM PLAN  
DCJ-1 2-4-14 [33]

21. 10-93449-D-13 ROSALIND TUCKER MOTION TO MODIFY PLAN  
CJY-4 2-17-14 [97]

**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. 13-91251-D-13 CARL/CHRISTINE CARPENTER MOTION TO CONFIRM PLAN  
TOG-4 2-6-14 [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.

23. 13-91554-D-13 ROBERT/ELISSA HART MOTION TO CONFIRM PLAN

**Tentative ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The court intends to deny the motion because the moving parties utilized a copy of the PACER matrix printed November 11, 2013, and as a result, failed to serve the creditors filing Claim Nos. 7, 8, and 9 (claims filed in December 2013) at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g).

As a result of this service defect, the motion will be denied. In the alternative, the court will continue the hearing to allow the moving parties to correct this service defect by filing a notice of continued hearing and serving it, together with the motion, proposed plan, and supporting declaration and exhibits, on the creditors who filed Claim Nos. 7, 8, and 9. The moving parties will need to give at least 42 days' notice of the continued hearing.

The court will hear the matter.

24.	09-92458-D-13	RENE RODRIGUEZ AND	MOTION TO VALUE COLLATERAL OF
	JDP-1	CLAUDIA DE RODRIGUEZ	REAL TIME RESOLUTIONS, INC.
			2-24-14 [97]

**Final ruling:**

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

25.	13-92063-D-13	VICTOR REYES UMANA	OBJECTION TO DEBTOR'S CLAIM OF
	RDG-3		EXEMPTIONS
			2-12-14 [41]

**Tentative ruling:**

This is the trustee's objection to the debtor's claim of exemptions. The trustee objected on two grounds: (1) that the debtor had used two different subdivisions of Cal. Code Civ. Proc. § 703.140(b) to exempt his interest in a 2002 Toyota Tacoma (the "vehicle"), without specifying the amounts claimed under each; and (2) that the debtor had failed to file a spousal waiver for use of the Cal. Code

Civ. Proc. § 703.140(b) exemptions. The objection will be sustained in part.

On March 3, 2014, the debtor filed a spousal waiver in the appropriate form that was signed by both the debtor and his spouse. As a result, the trustee's objection to the overall claim of exemptions on the ground of failure to file a spousal waiver is moot. However, the debtor has failed to amend his claim of exemptions to specify the portions of the value of the vehicle claimed as exempt under each of the two subdivisions, or to oppose the trustee's objection; thus, the objection to the claim of exemption of the vehicle will be sustained.

For the reason stated, the objection will be sustained in part, and the debtor's claim of exemption of his 2002 Toyota Tacoma will be disallowed. The court will hear the matter.

26. 11-91878-D-13 RAYMUNDO HURTADO  
TOG-5

CONTINUED MOTION TO VALUE  
COLLATERAL OF THE BANK OF NEW  
YORK MELLON  
2-3-14 [77]

**Tentative ruling:**

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of the Bank of New Mellon (the "Bank") at \$82,000, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a senior deed of trust on rental property of the debtor. The hearing was continued by stipulation of the parties to allow the Bank additional time to file opposition. The agreed due date for the Bank's opposition was March 11, 2014. As of this date, no 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 the Bank of New York Mellon's secured claim at \$82,000 by minute order. No further relief will be afforded. The court will hear the matter.

27. 12-91978-D-13 JASON/NANCY PHILLIPS  
CJY-4

MOTION TO MODIFY PLAN  
2-13-14 [53]

**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. 11-92285-D-13 SUE JORDAN  
CJY-1

MOTION TO MODIFY PLAN  
2-17-14 [43]

29. 13-91686-D-13 ROBERT/KATHY STATON  
JAD-3

MOTION TO VALUE COLLATERAL OF  
U.S. BANK  
1-29-14 [34]

**Final ruling:**

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

30. 14-90091-D-13 ALFREDO/DIANA OCHOA  
TOG-1

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
2-16-14 [14]

**Final ruling:**

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

31. 09-93295-D-13 ANDREW/HEATHER LAZAROM MOTION TO MODIFY PLAN  
DEF-9 2-10-14 [145]
32. 13-92099-D-13 LINDA VAUGHAN CONTINUED OBJECTION TO  
RDG-3 CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
1-22-14 [29]

**Tentative ruling:**

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. On February 14, 2014, the trustee filed a statement of non-opposition to confirmation of the plan. The statement bears the same docket control number as this objection to confirmation; thus, it appears the statement is, in essence, a withdrawal of the objection to confirmation.

However, the court has a concern. The debtor's Schedule D lists Hanson Aggregates Mid-Pacific, Inc. ("Hanson"), and Hanson's secured claim is expressly provided for by the plan. However, because the debtor did not list Hanson on her master address list, this creditor has never been given notice of this case, and has never been served with a copy of the plan. As a result of this service defect, the court is not prepared to confirm the plan at this time.

The court will hear the matter.

33. 13-92204-D-13 JORGE HERNANDEZ AND ANA CONTINUED OBJECTION TO  
RDG-1 PEREIRA CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
2-10-14 [25]

34. 09-93920-D-13 RAFAEL URIBE MOTION TO APPROVE LOAN  
CJY-3 MODIFICATION  
3-10-14 [41]
35. 09-91828-D-13 DANIEL CAVANAGH MOTION TO INCUR DEBT  
CJY-1 3-6-14 [63]
36. 10-90032-D-13 URIEL/GLORIA GUTIERREZ OBJECTION TO CLAIM OF FIA CARD  
TOG-10 SERVICES, N.A., CLAIM NUMBER 8  
3-5-14 [70]

**Final ruling:**

This is the debtors' objection to the claim of FIA Card Services, N.A. ("FIA"), Claim No. 8. The objection will be overruled for the following reasons: (1) the moving parties gave only 20 days' notice of the hearing, whereas the minimum amount of notice required for an objection to a claim is 30 days (see LBR 3015-1(b)(2)); and (2) the proof of service evidences service of the objection and exhibits, but not the notice of hearing.

As a result of these service and notice defects, the objection will be overruled by minute order. No appearance is necessary.

37. 11-92941-D-13 JASON/AMY OBERST  
CJY-2

MOTION TO APPROVE LOAN  
MODIFICATION  
3-10-14 [35]

38. 11-92744-D-13 JOSE/CORA PEREZ  
APN-2

CONTINUED MOTION TO FILE A  
FORMAL PROOF OF CLAIM  
2-7-14 [89]

**Tentative ruling:**

This is the motion of Ford Motor Credit ("Ford") for leave to amend an alleged informal proof of claim. The trustee has filed opposition. For the following reasons, the court intends to grant the motion, limited to the relief set forth in Ford's prayer.

When this case was filed, Ford held two secured claims - one secured by a 2007 Ford Expedition and one secured by a 2006 Ford Expedition. Ford filed a timely proof of claim for the former, but not for the latter. Ford claims it was delayed in filing a claim for the 2006 Expedition because (1) it mistakenly filed a proof of claim for a 2006 Ford Focus, a vehicle that had previously been totaled, instead of for the 2006 Expedition; and (2) the trustee mistakenly "matched up" the claim for the 2006 Focus to the 2006 Expedition, telling Ford the funds disbursed on the claim for the Focus would be transferred to the Expedition.

Neither of these reasons constitutes excusable neglect, and even if one or the other did, the court would have no authority to allow the late claim. See Gardenhire v. United States Internal Revenue Service (In re Gardenhire), 209 F.3d 1145, 1148 (9th Cir. 2000) ("a bankruptcy court lacks equitable discretion to enlarge the time to file proofs of claim; rather, it may only enlarge the filing time pursuant to the exceptions set forth in the Bankruptcy Code and Rules"); Coastal Alaska Lines, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.), 920 F.2d 1428, 1432-33 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists"); Dicker v. Dye (In re Edelman), 237 B.R. 146, 153 (9th Cir. BAP 1999) ["excusable neglect . . . does not apply to Rule 3002(c)."].

Ford also contends its objection to confirmation of the debtor's proposed plan and to the debtors' motion to value, Attachment M-3 to the plan, filed August 31, 2011, qualifies as an informal proof of claim that Ford may amend by filing a formal proof of claim for its claim secured by the 2006 Expedition. The requirements for an informal proof of claim are "(1) presentment of a writing; (2) within the time

for the filing of claims; (3) by or on behalf of the creditor; (4) bringing to the attention of the court; (5) the nature and amount of a claim asserted against the estate." Pac. Res. Credit Union v. Fish (In re Fish), 456 B.R. 413, 417 (9th Cir. BAP 2011). The problem is that Ford's objection to confirmation and to motion to value filed August 31, 2011 (in DC No. BSH-3) concerned the 2007 Expedition, not the 2006 Expedition; hence, it did not state the nature or amount of the claim secured by the 2006 Expedition.

However, on September 16, 2011, before the expiration of the claims bar date, Ford filed another objection to confirmation of the debtor's plan and to the debtors' motion to value, Attachment M-3 to the plan - this one concerning the 2006 Ford Expedition (in DC No. BSH-2). This time, the objection stated the nature of the claim - secured by a 2006 Expedition, and the amount Ford alleged to be the secured portion of the claim, \$17,800.<sup>1</sup> Neither the objection nor the supporting exhibits indicated the amount of the total claim asserted by Ford (i.e., the secured and unsecured portions). The objection to confirmation filed September 16, 2011 meets the requirements of an informal proof of claim as to the secured portion of the claim, but not as to the unsecured portion.

The trustee opposes the motion on the ground that the debtors' current plan will not fund if the claim is allowed. The trustee points out that other unsecured creditors have already received disbursements exceeding 8% of the amounts of their claims, and concludes that "[u]nless Ford . . . is willing to accept a lesser percentage on the unsecured portion of its claim . . . [i]t is unlikely that even a modified plan will fund." Trustee's Reply, filed March 7, 2014, at 1:23-26. Thus, the trustee concludes allowance of the claim may not be equitable under the circumstances.<sup>2</sup> It does not appear the trustee objects to allowance of a late claim for the secured portion of Ford's claim. Nor does it appear Ford is seeking allowance of the unsecured portion of its claim. Ford's motion concludes with the request that it be allowed "to amend its informal proof of claim by filing a formal proof of claim for the secured amount of \$16,300.00 for the 2006 Ford Expedition." Motion filed Feb. 4, 2014, at 2:22-23. The motion does not set forth the remaining balance of the claim (the unsecured portion) at all.

The court finds that Ford's objection to confirmation and to motion to value filed September 16, 2011 constituted an informal amendable proof of claim for the amount of \$17,800 secured (which amount has been superseded by the order confirming the debtors' plan and valuing collateral, DN 68, providing for the claim in the amount of \$16,300). Thus, assuming the relief now sought by Ford is limited to allowance of the secured portion of its claim, the motion will be granted. To the extent, if any, Ford seeks allowance of any portion of its claim in excess of \$16,300, the motion will be denied.

The court will hear the matter.

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1 Ford later withdrew the objection to confirmation and to the motion to value, and its claim secured by the 2006 Expedition was allowed, for purposes of the debtors' plan, at \$16,300.

2 See In re Sambo's Restaurants, Inc., 754 F.2d 811,816-17 (9th Cir. 1985) (citation omitted; emphasis added) ["In the absence of prejudice to an opposing party, the bankruptcy courts, as courts of equity, should freely allow amendments to proofs of claim that relate back to the filing date of the informal claim when the purpose is to cure a defect in the claim as filed or to describe the claim with



greater particularity."].

39. 10-90452-D-13 JULIETA MANAWATAO CONTINUED MOTION FOR  
CJY-1 COMPENSATION BY THE LAW OFFICE  
OF FRIEND YOUNGER FOR JAMES D.  
PITNER, DEBTOR'S ATTORNEY(S),  
FEES: \$712.50, EXPENSES: \$0.00  
2-4-14 [61]
40. 11-90058-D-13 EDWARD/MAXINE HARRIS MOTION TO VALUE COLLATERAL OF  
JDP-1 WELLS FARGO BANK, N.A.  
3-3-14 [45]
41. 13-92099-D-13 LINDA VAUGHAN AMENDED MOTION TO SELL FREE AND  
RJ-06 CLEAR OF LIENS  
3-5-14 [107]

**Final ruling:**

This is the debtor's motion to sell the real property commonly known as 3167 South El Pomar Rd., Templeton, California, to Mark Edwards and Stephanie Edwards for \$590,000. The motion will be denied because the moving party failed to serve Hanson Aggregates Mid-Pacific, Inc., listed on the debtor's Schedule D as the holder of a mechanic's lien against the property, or Walters Townsend & Schaelen, listed on the Seller's Estimated Settlement Statement as a lender to be paid out of escrow.

The motion will be denied for the additional independent reasons that (1) much of the motion is unintelligible; (2) certain of the forms of relief requested are sought with no supporting authority; and (3) there is no basis, in law or in fact, on which the court could approve the sale free and clear of liens, as requested. The court cites the following examples, without limiting the issues the court would require to be properly and clearly presented before it would consider any subsequent motion.

First, the moving party has submitted only what she refers to as excerpts from

the purchase and sale agreement,<sup>1</sup> stating in the motion that, while a copy of the agreement has been provided to the trustee, the moving party "would prefer that the Entire Purchase Agreement not be filed as an Exhibit." Amended Motion for Order Permitting Sale, filed March 5, 2014 ("Mot."), at 6:7-8. Before the court will consider any future motion, the court will require the entire agreement to be filed. Second, the settlement statement filed as an exhibit shows a payoff to lender Walters Townsend & Schaelen; the moving party will need to explain why this creditor was not listed on her schedules and was not notified of this bankruptcy case or this motion.<sup>2</sup> Third, the "excerpts" from the purchase and sale agreement that have been filed as exhibits indicate the debtor and her non-debtor spouse are the sellers, whereas the motion indicates the property is in the debtor's name (singular "debtor"), and her Schedule A shows the property to be held in fee simple by the debtor alone. (The column "Husband, Wife, Joint, or Community" is filled in simply with a blank: "-".) The court would not consider a subsequent motion with such a glaring discrepancy.

Fourth, the issue of the real estate commission as affecting the sales price causes significant concern. The motion states that Hank Hohenstein, of Home & Ranch Sotheby's International Realty, negotiated the sale, and "[i]t was hoped that the deal could be restructured to permit the buyer to pay the realtor's commission." Mot. at 3:25-27. The motion adds:

The net sale price after expenses of sale should be about \$545,000.00. This valuation represents a fair value for the subject property in a transaction negotiated at arms length by Realtors. The negotiation was largely prepetition. It had been anticipated that the contract with the buyer would be redrawn so that the buyer would pay the realtor's commission. However, as of this date such rearrangement of the proceeds from a \$590,000 gross price could not be accomplished. So, it is unclear whether the sales price is \$590,000 gross or else \$545,000 net. At this moment it appears that the An [sic] attempt was made to rewrite the transaction so that the funding conditions on the loan do not allow that. Whether the seller can pay commission on this sale depends upon the conditions which the court may impose upon authorizing this sale. It also might depend upon whether any senior secured creditors will consent to having their payoff's impaired by payment of the realtor's commission. The latter might be possible, but such consent has not been obtained yet. Consequently, and perhaps unfortunately, this motion must treat the sale price as if it were \$590,000. Elevating the effective sales price elevates some creditors to a secured position. Now, there may be more than another \$45,000 available for the plan's class 2 list of creditors whose value was predicted to be zero, \$0. Determining the priority of liens will require legal proceedings after consummation of the sale.

Mot. at 4:21-5:16. First, this language is disjointed and difficult to decipher. Second, the notion of "permitting the buyer to pay the realtor's commission," as the debtor puts it, smacks of price manipulation, and the court is not at all surprised to learn that the funding conditions of the buyers' new loan do not allow that (if that is what that sentence means). The buyers' loan is not the court's concern; however, the same principles strongly suggest to the court that the debtor's attempt to get the buyer to pay the commission, so the debtor could exclude the commission in determining the "sales price," was not made in good faith as regards the judgment lienholders the debtor is trying to squeeze out. The court will view any future attempt to characterize the commission as being paid by the buyers as an attempt to create an artificial sales price, and will find that any commission being paid,

whether stated to be payable by the debtor or the buyer, is part of the sales price. In short, the debtor will need to finalize and clarify how the matter of the real estate commission will be handled, and whether the sale will go forward if payment of the commission is not approved by the court or if there will be insufficient funds to pay the commission.

Fifth, the settlement statement includes three liens in favor of Bill Rouse, William Rouse, and/or Rouse Construction (collectively, "Rouse"), in the amounts of \$5,351.97, \$7,625, and \$5,351.97, respectively. (It is not clear whether the two \$5,351.97 liens are duplicates of a single lien.) Rouse is mentioned twice in the motion, first in paragraph 18 as holding a consensual lien in the amount of \$7,625, and second in paragraph 21 as holding a judgment lien in the amount of \$3,759. The exhibits conflict with these contentions. They show (1) a recorded abstract of judgment in the amount of \$7,625 (i.e., not a consensual lien); (2) an abstract of judgment in the amount of \$3,759, accompanied by a recorded acknowledgment of satisfaction of that judgment; and (3) a recorded abstract of judgment in the amount of \$5,351.97. There is no explanation as to why the debtor characterizes Rouse's \$7,625 judgment lien as a consensual lien or as to why she proposes to pay it rather than including it in the group of judgment liens she is seeking to avoid. And there is no mention in the motion of the \$5,351.97 lien or any indication of how it will be treated in the sale. (The debtor has not filed a motion to avoid any of the Rouse liens.)

Sixth, the motion mentions a lis pendens recorded by Hanson Aggregates Mid-Pacific, Inc. (one of the creditors that has not been noticed of this case or the motion), stating it should be possible to get it expunged, but if not, it will need to be paid. The motion states the lien is in the amount of approximately \$2,229.72. However, the exhibits include a copy of a mechanic's lien in the amount of \$2,229.72 recorded almost 12 years ago. The debtor provides no indication what amount might be due at this time.

Seventh, the motion creates a good deal of confusion regarding the tax liens. The settlement statement indicates the debtor expects to pay \$116,295 worth of IRS and Franchise Tax Board (the "FTB") liens through the sale. The motion states the IRS's \$58,257 claim will be paid through the sale, along with a \$29,066 FTB lien. The motion refers to a second FTB lien in the amount of \$29,066, described as "(separate from the other lien)" (Mot. at 11:7), in paragraph 21 in the list of judgment liens the debtor is seeking to avoid, which the motion states are expected to be paid nothing. However, the motion does not suggest any basis on which the court might avoid the FTB's tax lien. (Section 522(f)(1)(A) permits the avoidance of judicial liens in certain circumstances; it does not permit the avoidance of statutory liens such as tax liens.)

Further, as regards the tax liens, the IRS and the FTB have filed secured claims in this case for \$8,290 and \$3,356, respectively. The motion acknowledges this, but adds that "a proper analysis of [the IRS claim] would place the actual secured claim at \$58,257.07" (Mot. at 9:4-6). The motion, however, does not provide any analysis or suggest any reason the court would approve a sale allowing a secured creditor to be paid so much more (at the expense of junior judgment lienholders) than the amount it has claimed in this case. Similarly, as to the FTB, the motion states: "[c]ontrary to the \$3356 proof of claim in this case, the potential secured claim of Franchise tax board is higher, at \$29,066.00 . . . ." (Mot. at 9:16-18). But as with the IRS, the motion offers no authority for the court to permit that claim to be paid at the much higher figure. For purposes of any future motion, the court will consider the amounts of the tax liens to be as set forth in the taxing

authorities' proofs of claim. See Fed. R. Bankr. P. 3001(f).

Eighth, if the IRS and FTB claims are included in the settlement statement at the amounts of their filed proofs of claim, rather than the higher amounts asserted by the debtor, it appears there is equity in the property to support at least some portion of some of the judgment liens the debtor is seeking to avoid, and possibly, the entire amounts of all the judgment liens, depending on which of the Rouse claims will be paid, on whether the Hansen Aggregates Mid-Pacific and Walters Townsend & Schaelen liens will be paid, and on the current amounts due on the judgment liens themselves.

Finally, the court will not approve a sale free and clear of all liens, but only free and clear of specified liens, assuming the specified lienholders have been properly noticed and the property may properly be sold free and clear of those liens pursuant to § 363(f) of the Bankruptcy Code. The debtor cites § 363(f)(3) and two cases construing it as supporting the sale free and clear of certain of the liens in this case; however, the debtor provides no analysis of the issue, and the court would not be prepared to approve a sale free and clear of liens on that basis.

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

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1 The moving party has filed copies of what appears to be the signature page of the original offer (page 8 of 8), a counter-offer, and an addendum.

2 It is disconcerting that this creditor is not included in the list of liens in the motion and supporting declaration.

42. 13-92099-D-13 LINDA VAUGHAN  
RJ-07

MOTION TO AVOID LIEN OF STEVEN  
BUDROW  
3-11-14 [114]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Steven Budrow. The motion will be denied because the court is unable to conclude, based on the record, that the lien impairs an exemption to which the debtor is entitled. In this regard, the court adopts as part of its ruling herein its ruling on the debtor's Amended Motion for Order Permitting Sale of Property Free and Clear of Liens, DC No. RJ-6, also on this calendar.

There are additional issues. According to the creditor's abstract of judgment, filed as an exhibit, the judgment is against the debtor's spouse, Gerald Vaughan only, and is not against the debtor, Linda Vaughan. The debtor has submitted no authority for the proposition that she is entitled to avoid a judicial lien against a non-debtor, or that she may avoid the lien on the interest of Gerald Vaughan in the property.<sup>1</sup> (As the judgment is not against the debtor, it apparently never attached to her interest in the property; thus, as far as that interest is concerned, there is no lien to avoid.)

Finally, the debtor seeks an order that the lien will not be reinstated if the case is dismissed. By contrast, the court's practice in chapter 13 cases is to avoid a lien for purposes of plan confirmation, leaving the debtor free to seek a formal lien release when and if the plan is completed and a discharge is issued. The debtor has submitted insufficient authority for an order providing that the lien may not be reinstated if the chapter 13 plan is not completed. The debtor cites § 349(b), which provides that unless the court, for cause, orders otherwise, a dismissal of a case reinstates any transfer avoided under § 522. The debtor apparently relies on the "unless the court orders otherwise" language, but provides no authority for the conclusion that a sale of property satisfies the requirement that the court find cause for ordering otherwise.

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

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1 As pointed out in the court's ruling on the sale motion, the motion suggests the property is owned by the debtor and Gerald Vaughan, but the debtor scheduled her interest as a fee simple interest, and did not list any co-owners on her Schedule A. Additionally, it is not clear whether the debtor is still married to Gerald Vaughan - in her motion to approve the sale of the real property, the debtor refers to her husband, but her Schedule I lists her marital status as single.

43. 13-92099-D-13 LINDA VAUGHAN  
RJ-08

MOTION TO AVOID LIEN OF LA  
COMMERCIAL GROUP, INC.  
3-11-14 [122]

**Final ruling:**

This is the debtor's motion to avoid a judicial lien held by L.A. Commercial Group, Inc. The motion will be denied because the court is unable to conclude, based on the record, that the lien impairs an exemption to which the debtor is entitled. In this regard, the court adopts as part of its ruling herein its ruling on the debtor's Amended Motion for Order Permitting Sale of Property Free and Clear of Liens, DC No. RJ-6, also on this calendar.

There is an additional issue. The debtor seeks an order that the lien will not be reinstated if the case is dismissed. By contrast, the court's practice in chapter 13 cases is to avoid a lien for purposes of plan confirmation, leaving the debtor free to seek a formal lien release when and if the plan is completed and a discharge is issued. The debtor has submitted insufficient authority for an order providing that the lien may not be reinstated if the chapter 13 plan is not completed. The debtor cites § 349(b), which provides that unless the court, for cause, orders otherwise, a dismissal of a case reinstates any transfer avoided under § 522. The debtor apparently relies on the "unless the court orders otherwise" language, but provides no authority for the conclusion that a sale of property satisfies the requirement that the court find cause for ordering otherwise.

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

appearance is necessary.

44. 13-92099-D-13 LINDA VAUGHAN  
RJ-09

MOTION TO AVOID LIEN OF  
DEPARTMENT OF LABOR  
3-11-14 [118]

**Final ruling:**

This is the debtor's motion to avoid a judicial lien held by the Labor Commissioner of the State of California. The motion will be denied because the court is unable to conclude, based on the record, that the lien impairs an exemption to which the debtor is entitled. In this regard, the court adopts as part of its ruling herein its ruling on the debtor's Amended Motion for Order Permitting Sale of Property Free and Clear of Liens, DC No. RJ-6, also on this calendar.

There are additional issues. According to the creditor's abstract of judgment, filed as an exhibit, the judgment is against the debtor's spouse, Gerald Vaughan only, and is not against the debtor, Linda Vaughan. The debtor has submitted no authority for the proposition that she is entitled to avoid a judicial lien against a non-debtor, or that she may avoid the lien on the interest of Gerald Vaughan in the property.<sup>1</sup> (As the judgment is not against the debtor, it apparently never attached to her interest in the property; thus, as far as that interest is concerned, there is no lien to avoid.)

Finally, the debtor seeks an order that the lien will not be reinstated if the case is dismissed. By contrast, the court's practice in chapter 13 cases is to avoid a lien for purposes of plan confirmation, leaving the debtor free to seek a formal lien release when and if the plan is completed and a discharge is issued. The debtor has submitted insufficient authority for an order providing that the lien may not be reinstated if the chapter 13 plan is not completed. The debtor cites § 349(b), which provides that unless the court, for cause, orders otherwise, a dismissal of a case reinstates any transfer avoided under § 522. The debtor apparently relies on the "unless the court orders otherwise" language, but provides no authority for the conclusion that a sale of property satisfies the requirement that the court find cause for ordering otherwise.

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

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<sup>1</sup> As pointed out in the court's ruling on the sale motion, the motion suggests the property is owned by the debtor and Gerald Vaughan, but the debtor scheduled her interest as a fee simple interest, and did not list any co-owners on her Schedule A. Additionally, it is not clear whether the debtor is still married to Gerald Vaughan - in her motion to approve the sale of the real property, the debtor refers to her husband, but her Schedule I lists her marital status as single.

45. 13-92099-D-13 LINDA VAUGHAN  
RJ-10

MOTION TO AVOID LIEN OF CREDIT  
BUREAU OF SANTA MARIA  
3-11-14 [126]

**Final ruling:**

This is the debtor's motion to avoid a judicial lien held by Credit Bureau of Santa Maria, Inc. The motion will be denied because the court is unable to conclude, based on the record, that the lien impairs an exemption to which the debtor is entitled. In this regard, the court adopts as part of its ruling herein its ruling on the debtor's Amended Motion for Order Permitting Sale of Property Free and Clear of Liens, DC No. RJ-6, also on this calendar.

There are additional issues. According to the creditor's abstract of judgment, filed as an exhibit, the judgment is against the debtor and the debtor's spouse, Gerald Vaughan. The debtor has submitted no authority for the proposition that she is entitled to avoid a judicial lien to the extent it is against a non-debtor, or that she may avoid the lien on the interest of Gerald Vaughan in the property, or only on her interest.<sup>1</sup>

Finally, the debtor seeks an order that the lien will not be reinstated if the case is dismissed. By contrast, the court's practice in chapter 13 cases is to avoid a lien for purposes of plan confirmation, leaving the debtor free to seek a formal lien release when and if the plan is completed and a discharge is issued. The debtor has submitted insufficient authority for an order providing that the lien may not be reinstated if the chapter 13 plan is not completed. The debtor cites § 349(b), which provides that unless the court, for cause, orders otherwise, a dismissal of a case reinstates any transfer avoided under § 522. The debtor apparently relies on the "unless the court orders otherwise" language, but provides no authority for the conclusion that a sale of property satisfies the requirement that the court find cause for ordering otherwise.

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

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<sup>1</sup> As pointed out in the court's ruling on the sale motion, the motion suggests the property is owned by the debtor and Gerald Vaughan, but the debtor scheduled her interest as a fee simple interest, and did not list any co-owners on her Schedule A. Additionally, it is not clear whether the debtor is still married to Gerald Vaughan - in her motion to approve the sale of the real property, the debtor refers to her husband, but her Schedule I lists her marital status as single.

**Final ruling:**

This is the debtor's motion to avoid a judicial lien held by William Stegner. The motion will be denied because the court is unable to conclude, based on the record, that the lien impairs an exemption to which the debtor is entitled. In this regard, the court adopts as part of its ruling herein its ruling on the debtor's Amended Motion for Order Permitting Sale of Property Free and Clear of Liens, DC No. RJ-6, also on this calendar.

There are additional issues. According to the creditor's abstract of judgment, filed as an exhibit, the judgment is against the debtor's spouse, Gerald Vaughan only, and is not against the debtor, Linda Vaughan. The debtor has submitted no authority for the proposition that she is entitled to avoid a judicial lien against a non-debtor, or that she may avoid the lien on the interest of Gerald Vaughan in the property.<sup>1</sup> (As the judgment is not against the debtor, it apparently never attached to her interest in the property; thus, as far as that interest is concerned, there is no lien to avoid.)

Finally, the debtor seeks an order that the lien will not be reinstated if the case is dismissed. By contrast, the court's practice in chapter 13 cases is to avoid a lien for purposes of plan confirmation, leaving the debtor free to seek a formal lien release when and if the plan is completed and a discharge is issued. The debtor has submitted insufficient authority for an order providing that the lien may not be reinstated if the chapter 13 plan is not completed. The debtor cites § 349(b), which provides that unless the court, for cause, orders otherwise, a dismissal of a case reinstates any transfer avoided under § 522. The debtor apparently relies on the "unless the court orders otherwise" language, but provides no authority for the conclusion that a sale of property satisfies the requirement that the court find cause for ordering otherwise.

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

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<sup>1</sup> As pointed out in the court's ruling on the sale motion, the motion suggests the property is owned by the debtor and Gerald Vaughan, but the debtor scheduled her interest as a fee simple interest, and did not list any co-owners on her Schedule A. Additionally, it is not clear whether the debtor is still married to Gerald Vaughan - in her motion to approve the sale of the real property, the debtor refers to her husband, but her Schedule I lists her marital status as single.