

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

April 1, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

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

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|-----------------------------------|-------------|--------------------------------|
| 1. 13-32907 -D-13 | MINDY LOPEZ | MOTION TO CONFIRM PLAN |
| JBR-2 | | 2-15-14 [37] |

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. No timely opposition to the motion has been filed. However, the court is not prepared to grant the motion at this time because the proof of service fails to adequately state the manner of service, stating only that the documents were "enclosed in a sealed envelope as follows: [names and addresses]." The proof of service does not indicate that the documents were mailed with postage prepaid, and thus, does not adequately evidence service.

The court will continue the hearing to April 15, 2014, at 10:00 a.m., the moving party to file a corrected proof of service no later than April 4, 2014. The hearing will be continued by minute order. No appearance is necessary on April 1, 2014.

2. [10-50108](#)-D-13 ERNEST/PATSY GARZA
JDP-2

MOTION TO VALUE COLLATERAL OF
GREENTREE, LLC
3-6-14 [[43](#)]

3. [13-36215](#)-D-13 CINDY/DONAL LEE
CLH-1

MOTION TO VALUE COLLATERAL OF
RESIDENTIAL FUNDING MORTGAGE
SECURITIES II, INC.
2-27-14 [[21](#)]

Final ruling:

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

4. [13-36215](#)-D-13 CINDY/DONAL LEE
CLH-2

MOTION TO AVOID LIEN OF TARGET
NATIONAL BANK
2-28-14 [[25](#)]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Target National Bank (the "Bank"). The motion will be denied because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank by certified mail to the attention of an officer, managing or general agent, or agent for service of process, whereas the rule requires that service on an FDIC-insured institution, such as the Bank, be to the attention of an officer, and only an officer. For service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, the applicable rule requires service to the attention of an officer, managing or general agent, or agent for service of process. See Fed. R. Bankr. P. 7004(b)(3). If service on an FDIC-insured institution to the attention of an officer, managing or general agent, or agent for service of process were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.

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

5. [14-21815](#)-D-13 JARNAIL KANG
CLH-1

MOTION TO AVOID LIEN OF CACH,
LLC
2-28-14 [[10](#)]

Final ruling:

This is the debtor's motion to partially avoid a judicial lien held by CACH, LLC. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds that the judicial lien described in the motion impairs in part an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to partially avoid the lien, in the amount set forth in the motion. Moving party is to submit an appropriate order. No appearance is necessary.

6. [14-21815](#)-D-13 JARNAIL KANG
CLH-2

MOTION TO AVOID LIEN OF UNIFUND
CCR, LLC
2-28-14 [[15](#)]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

7. [14-21815](#)-D-13 JARNAIL KANG
CLH-3

MOTION TO AVOID LIEN OF CACH,
LLC
2-28-14 [[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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

8. [13-34117](#)-D-13 ANTHONY/LISA JIMENEZ MOTION TO CONFIRM PLAN
DN-1 2-13-14 [[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.

9. [13-28318](#)-D-13 WILLIS/VICKIE MARZOLF CONTINUED OBJECTION TO
BER-1 CONFIRMATION OF PLAN BY
FINANCIAL CENTER CREDIT UNION
2-10-14 [[168](#)]

10. [13-28318](#)-D-13 WILLIS/VICKIE MARZOLF CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
2-10-14 [[171](#)]

11. [13-28318](#)-D-13 WILLIS/VICKIE MARZOLF MOTION FOR COMPENSATION FOR
SLF-8 GARY FARRAR, CHAPTER 7
TRUSTEE(S), FEES: \$2,520.00,
EXPENSES: \$0.00
2-24-14 [[175](#)]

Tentative ruling:

This is the motion of the former chapter 7 trustee in this case (the "Applicant") for an allowance of compensation as an administrative claim. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a), and are within the statutory maximum as applied to the distributions to be made by the chapter 13 trustee under the debtors' proposed chapter 13 plan. See In re Hages, 252 B.R. 789, 795 (Bankr. N.D. Cal. 2000). As such, with one exception,

the court will grant the motion. The Applicant has offered no authority for his request that his administrative claim be paid before other administrative claims, and the court intends to deny that request. See Hages, 252 B.R. at 798 (administrative claims generally paid pro rata).

The court will hear the matter.

12. [13-28318](#)-D-13 WILLIS/VICKIE MARZOLF
SLF-9

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF THE SUNTAG LAW
FIRM FOR DANA A. SUNTAG,
TRUSTEE'S ATTORNEY(S), FEES:
\$15,000.00, EXPENSES: \$0.00
2-24-14 [[181](#)]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the application of the Suntag Law Firm ("Counsel") for compensation as counsel for the chapter 7 trustee who served in this case before it was converted to chapter 13. The motion was opposed by the debtors, and the parties later submitted a stipulation in which they have agreed that the court should approve compensation in the reduced amount set forth in the stipulation. The court will grant the application in part and award compensation in the amount set forth in the stipulation. However, having reviewed Counsel's time records, in the exercise of the court's independent duty to determine the reasonableness of all requests for compensation, the court has a concern Counsel should be aware of.

The court finds that at least one of the points raised by the debtors is well taken. Counsel billed a total of \$5,706.50 for two objections to the debtors' claims of exemption. The amounts billed for several of the tasks in this category appear excessive. For example, one of Counsel's attorneys billed 1.2 hours for legal research regarding the inability of a debtor to claim exemptions under both § 703.140(b) and §§ 704.010, et. seq., and another 2.2 hours to prepare a one and one-half page objection to exemptions citing Cal. Code Civ. Proc. § 704.140(a), along with Collier on Bankruptcy and three cases. The attorney then billed another 0.5 hours to prepare the notice of hearing, which was a boilerplate form in which the attorney filled in the blanks for the date, time, department, trustee's name, and nature of the proceeding (objection to exemption). All of this time was billed at \$295 per hour. A supervising attorney, apparently (at any rate, an attorney billing at a higher rate), then billed 1.0 hour to review and revise the objection, at \$315 per hour. All of these amounts were excessive.

The court sustained the trustee's objection, and the debtors filed an amended Schedule C on which they again claimed exemptions under both sets of exemptions; however, this time, they used the § 703.140(b) exemptions exclusively except for a single category of assets - jewelry valued at \$500 - which they claimed under § 704.040, probably by mistake. In response to the amended Schedule C, Counsel filed a second objection to exemptions, raising the same issue as in the first objection - that a debtor may not claim exemptions under both sets of exemptions. The second objection was virtually identical to the first - it cited § 703.140(a), the same

section from Collier, and the same three cases, and added no new authorities at all (not that any would have been necessary). The second objection added the conclusion that "in twice using blatantly improper exemptions," the debtors appeared to have acted in bad faith.¹

It appears the second objection to exemptions was prepared without regard to reasonableness in that if the debtors had further amended their Schedule C to remove the claim of exemption of the jewelry, the most the estate would have gained was \$500 (assuming the debtors could not have claimed the jewelry as exempt under § 703.140(b)). By contrast, Counsel billed \$2,622 for the second objection. Counsel assigned a third attorney, who billed 3.0 hours to prepare the second objection, at \$225 per hour, and another 3.3 hours to draft unidentified documents in support of the objection (none of which were filed). The attorney billing at \$295 then spent 0.5 hours reviewing and revising the objection; the attorney billing at \$315 spent 1.0 hour reviewing and revising it; and the attorney who had drafted it then spent another 3.3 hours editing and finalizing it. All of this despite the fact that the second objection, as filed, was almost identical to the first.

The court recognizes that Counsel reduced its fee request from the amount billed, \$17,801 (plus costs), to \$15,000 (including costs) prior to filing this fee application, and that by its stipulation with the debtors, Counsel has agreed to reduce its total request to \$10,526. Having examined the time records, together with the record in this case, the court is prepared to grant the application in part, awarding the agreed amount of \$10,526, with the caution that Counsel will be expected to exercise reasonable billing judgment on a go-forward basis in other cases.

The moving party is to submit an order consistent with this ruling. No appearance is necessary.

¹ Counsel also referred in the second objection to changes the debtors had made in their amended schedules to the values of some of their assets. However, that issue was not relevant to the objection to exemption and was apparently included only to portray the debtors as unreasonable.

13. [12-24126](#)-D-13 JUAN GUTIERREZ
CJY-2

MOTION TO MODIFY PLAN
2-20-14 [[38](#)]

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.

14. [11-25929](#)-D-13 CURT NIZZOLI MOTION TO MODIFY PLAN
DCJ-2 2-6-14 [[48](#)]
15. [13-31529](#)-D-13 TANESIA WILLIAMS-ALLEN MOTION TO CONFIRM PLAN
CAH-2 2-14-14 [[47](#)]
16. [11-36433](#)-D-13 RONALD/APRIL MCFARLAND MOTION TO MODIFY PLAN
TBK-3 2-18-14 [[51](#)]
17. [10-50037](#)-D-13 ANTHONY/EVELIA ADAMS MOTION TO INCUR DEBT
MCB-3 2-17-14 [[68](#)]

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.

18. [10-50037](#)-D-13 ANTHONY/EVELIA ADAMS
MCB-4

MOTION TO MODIFY PLAN
2-17-14 [[75](#)]

19. [12-21542](#)-D-13 GILBERT RODRIGUEZ AND
CJY-6 STEPHANIE

OBJECTION TO CLAIM OF U.S. BANK
TRUST, N.A., CLAIM NUMBER 8
2-12-14 [[102](#)]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the debtors' objection to claim and disallow the arrearage portion of U.S. Bank Trust's claim. Moving party is to submit an appropriate order. No appearance is necessary.

20. [13-29144](#)-D-13 FRANCISCO ITURBIDE
PGM-4

MOTION TO CONFIRM PLAN
2-13-14 [[69](#)]

Final ruling:

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

21. [10-42455](#)-D-13 PAUL BORJA AND THERESA
NLG-1 PEREZ-BORJA

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-25-14 [[55](#)]

NATIONSTAR MORTGAGE, LLC VS.

Final ruling:

In the debtors' confirmed plan this creditor is scheduled as Class 4 - to be paid outside the plan. Therefore, the motion is unnecessary as the plan explicitly provides: "Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of its loan or security documentation provided this case is pending under chapter 13." The court will deny the motion as unnecessary by minute order. No appearance is necessary.

22. [11-48255](#)-D-13 RONALD SIEGEL
JHW-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
2-26-14 [[35](#)]

NATIONAL CAPITAL MANAGEMENT,
LLC VS.

Filing ruling:

Creditor, National Capital Management, LLC, is a Class 3 creditor in a plan confirmed February 28, 2014, pursuant to which the stay lifted upon entry of the order confirming plan. The confirmed plan states that, "Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 3 secured claim to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and nonjudicial remedies against its collateral." Accordingly, the motion will be denied by minute order as unnecessary. No appearance is necessary.

23. [13-33755](#)-D-13 PEGGI/DOMINIC MACHADO
AKH-1

CONTINUED MOTION TO VALUE
COLLATERAL OF BANK OF AMERICA
12-26-13 [[24](#)]

Tentative ruling:

This is the debtors' motion to value collateral of Bank of America (the "Bank"); namely, a second position deed of trust against the residence of debtor Peggi Machado, at \$0. (The debtors are separated - debtor Dominic Machado has a different residence.) The Bank filed opposition to the motion, and the hearing was continued to allow both parties to submit additional evidence, which they have done. For the following reasons, the motion will be denied.

There is a deed of trust on the property that is senior to the Bank's deed of trust; the debtors asserted in their motion that the senior lien secures a claim in the amount of \$310,500. Thus, as the motion was framed, if the value of the property is more than \$310,500, the debtors would not be entitled to value the Bank's claim under § 506(a) of the Bankruptcy Code.¹

Debtor Peggi Machado testified in support of the motion that she believes the value of the property is \$245,000. Since the time she filed her declaration supporting the motion, both the debtors and the Bank have obtained formal appraisals of the property, the appraisers arriving at different values, both significantly higher than the value initially asserted by the debtors. Thus, the court will give very little weight to the debtor's testimony as to value. A homeowner may testify to his or her opinion of the value of his or her property. 2 Russell, Bankruptcy Evidence Manual § 701:2, pp. 784-85 (West 2012-2013 ed.). However, as against the testimony of an individual with professional experience as a real estate appraiser, the court gives greater weight to the opinion of the appraiser. Thus, in this case, the court accords far greater weight to the testimony of the respective appraisers, and little weight, if any, to the opinion of the debtors.

The appraisers chosen by the Bank and the debtors appear to have similar qualifications. The Bank's appraiser, Chester Voress, has been an appraiser since 1988; the debtors' appraiser, Chris D. Wilkinson, since 1992. Mr. Voress concluded that the value of the property, as of the petition date, October 25, 2013, was \$365,000; Mr. Wilkinson arrived at a value of \$310,000 as of the same date. The court has examined the respective appraisals, including the comparable sales relied on by each appraiser, and finds each appraisal to be relatively balanced and reasonable. Thus, the court gives equal weight to the two appraisals, and concludes that the value of the property as of the petition date was the average of the two appraisers' values, or \$337,500. As that value exceeds the amount due on the senior lien, as estimated by the debtors, \$310,500, the debtors may not value the Bank's secured claim, and the motion will be denied.²

The court will hear the matter.

1 The senior lienholder has now filed a proof of claim, which might be said to change the analysis somewhat. See discussion below.

2 The court notes that, coincidentally, on the day the debtors filed their appraiser's declaration and appraisal, March 4, 2014, the senior lienholder filed a proof of claim in the amount of \$308,213. Considering that amount, there is equity in the property, albeit minimal, over and above the amount of the senior lien, even using the appraised value offered by the debtors, \$310,000.

24. [13-33755](#)-D-13 PEGGI/DOMINIC MACHADO CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-18-13 [[21](#)]

25. [14-21455](#)-D-13 ABRAHAM/SILVIA MAGALLANEZ MOTION TO VALUE COLLATERAL OF
JCK-1 CENLAR
2-20-14 [[8](#)]

Final ruling:

This is the debtors' motion to value collateral of Cenlar. The motion will be denied because (1) the proof of service evidences service of an amended notice of hearing only, whereas there is no amended notice of hearing on file; and (2) the proof of service does not evidence service of the notice of hearing, the motion, or the supporting declaration or exhibits. As a result of these service defects, the motion will be denied by minute order. No appearance is necessary.

26. [13-25357](#)-D-13 JOHN/BRENDA PREYER
CJY-1

MOTION TO MODIFY PLAN
2-20-14 [[17](#)]

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.

27. [13-26259](#)-D-13 JAGROOP SINGH
MJK-5

MOTION TO CONFIRM PLAN
2-3-14 [[156](#)]

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 Cefcu, Chase, and HSBC, added to his Schedule D by amendment filed December 27, 2013, as required by Fed. R. Bankr. P. 2002(b); (2) the moving party failed to serve the parties requesting special notice at DN 132 and 134 at their designated addresses, as required by Fed. R. Bankr. P. 2002(g) (counsel is cautioned that where a PACER matrix is used, as here, it should be an up-to-date version); (3) the notice of hearing does not state the location of the courthouse, as required by LBR 9014-1(d)(2); and (4) the motion states in the "restatement" that the debtor seeks confirmation of the First Amended Chapter 13 Plan, whereas the plan filed and served as an exhibit to the motion is the debtor's original plan, not his amended plan.

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

28. [13-35961](#)-D-13 JESSE SANCHEZ
DMR-1

MOTION TO VALUE COLLATERAL OF
U.S. BANK, N.A.
2-17-14 [[14](#)]

Final ruling:

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

29. [13-26162](#)-D-13 ERIC/RAQUEL ALMASON
APN-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-25-14 [[63](#)]

REDBRIDGE OWNER'S
ASSOCIATION VS.

Final ruling:

In the debtors' confirmed plan this creditor is scheduled as Class 4 - to be paid outside the plan. Therefore, the motion is unnecessary as the plan explicitly provides: "Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of its loan or security documentation provided this case is pending under chapter 13." The court will deny the motion as unnecessary by minute order. No appearance is necessary.

30. [09-29867](#)-D-13 GLENN/EDELWINA COLETO
JDP-2

MOTION TO VALUE COLLATERAL OF
JP MORGAN CHASE BANK, N.A.
3-6-14 [[55](#)]

31. [14-21671](#)-D-13 JOAQUIN/LILIANA GARCIA
CLH-1

MOTION TO VALUE COLLATERAL OF
RESMAE MORTGAGE CORPORATION
3-4-14 [[14](#)]

Final ruling:

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

32. [12-25179](#)-D-13 LARRY/CARRIE STAMPER MOTION TO MODIFY PLAN
JCK-2 2-25-14 [[45](#)]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

33. [14-20883](#)-D-13 ALLEN/PATRICIA FRANSELLA MOTION FOR RELIEF FROM
MBB-1 AUTOMATIC STAY
2-20-14 [[11](#)]

STATE FARM BANK VS.

Final ruling:

This matter is resolved without oral argument. This is State Farm Bank's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtors are not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. Accordingly, the court will grant relief from stay by minute order. As the debtors are not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

34. [12-41787](#)-D-13 EDDIE/DIANN MANNIE MOTION TO MODIFY PLAN
JCK-2 2-13-14 [[39](#)]

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.

35. [13-35390](#)-D-13 PAUL/KIMBERLY CAVA
ALB-3

MOTION TO CONFIRM PLAN
2-26-14 [[56](#)]

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 gave only 34 days' notice of the hearing, rather than 42 days', as required by LBR 3015-1(d)(1) and applicable rules; and (2) the motion states that the debtors seek confirmation of a First Amended Chapter 13 Plan, whereas the plan filed with the motion is entitled simply Chapter 13 Plan.

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

36. [14-22203](#)-D-13 PAUL/ANNE NUNEZ
PLG-1

MOTION TO EXTEND AUTOMATIC STAY
3-18-14 [[8](#)]

37. [13-36215](#)-D-13 CINDY/DONAL LEE
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
2-24-14 [[18](#)]

Tentative ruling:

This is the trustee's objection to confirmation of the debtors' proposed chapter 13 plan. The hearing was continued to allow the debtors to file opposition, which they have done. The court will hear from the trustee as to whether the debtors have satisfied his concerns. However, regardless of the trustee's position, the court would not be prepared to confirm the plan at this time for the following independent reasons. First, on March 7, 2014, the debtors filed amended Schedules D and F, adding creditors to both; however, those newly-added creditors have never been served with notice of this bankruptcy case, notice of the deadline to file proofs of claim, or notice of the deadline to file objections to the plan. Thus, the debtors have failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b).

Second, the debtors listed Daljeet Mann on their Schedule G as a party to month-to-month business lease, but at an unknown address. They did not list Daljeet

Mann on their master address list; thus, that creditor has never received notice of this case, notice of the deadline to file proofs of claim, or notice of the deadline to file objections to the plan. Pursuant to Fed. R. Bankr. P. 1007(a)(1), a debtor is required to file with his or her petition a list containing the name and address of each entity included or to be included on Schedules D, E, F, G, and H. Here, the debtors failed to list this creditor, by name and address, on their master address list, as they were required to do. (And it is difficult to believe that the debtors had no address, and in the exercise of reasonable diligence, were unable to obtain an address for an individual who is or was a party to a business lease with the debtors.)

Debtors' attorneys sometimes, apparently, believe an individual or entity that is a party to a lease with a debtor, and thus is listed on the debtor's Schedule G, is not a creditor, and therefore, need not be listed on the master address list and need not receive notice of the case and notice of the deadline for filing objections to chapter 13 plans. As to the master address list, the matter is covered by Fed. R. Bankr. P. 1007(a)(1), which expressly requires that persons and entities listed on Schedule G be listed on the master address list. As to the requirement of Fed. R. Bankr. P. 2002(b) that all creditors be noticed of the deadline to file objections to chapter 13 plans, in light of the very broad definition of "creditor" under the Bankruptcy Code (see § 101(5) and (1)), there is no doubt that parties to executory contracts and unexpired leases, even on a month-to-month basis, are creditors within the applicable definition and must be noticed of the time fixed for filing objections to chapter 13 plans, which did not occur here.

The court will hear the matter.

38. [08-30027](#)-D-13 DAVINDER BAJWA
RDG-2

CASE DISMISSED 11/26/13

MOTION TO RECONSIDER DISMISSAL
OF CASE
3-17-14 [[104](#)]

39. [14-21197](#)-D-13 SILVIA QUIROGA
RJ-1

MOTION TO VALUE COLLATERAL OF
SPRINGLEAF FINANCIAL SERVICES,
INC
3-19-14 [[22](#)]