UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

August 6, 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.	10-41805-D-13 JDP-1	ARTHUR/MICHELLE CROWTON	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 6-20-13 [61]

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.

2. 13-23405-D-13 JOSEPH/SARA THOMAS MOTION TO CONFIRM PLAN
RIN-5 6-10-13 [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.

3. 13-23405-D-13 JOSEPH/SARA THOMAS MOTION TO VALUE COLLATERAL OF
RIN-6 DISCOVER BANK
6-29-13 [72]

Final ruling:

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

4. 09-40008-D-13 SUZANNE STONE MOTION TO MODIFY PLAN
CJY-3 6-27-13 [47]

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. 10-43411-D-13 JORGE/NAVIDAD MARTINEZ MOTION TO MODIFY PLAN
CJY-1 7-1-13 [58]

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. 11-40912-D-13 ARNEL/KATRINA DE JESUS MOTION TO MODIFY PLAN
TBK-6 6-14-13 [103]

7. 09-30513-D-13 STEVEN/BRANDY NORMAN OBJECTION TO CLAIM OF PREFERRED
DN-3 JEWELERS, CLAIM NUMBER 21
6-20-13 [66]

Final ruling:

the court finds that a hearing will not be helpful and is not necessary. This is the debtors' objection to the claim of Preferred Jewelers, Claim No. 21 on the court's claims register. The objection is that the claim was filed on October 20, 2009, whereas the deadline for filing claims in this case was October 13, 2009. The court has reviewed the record in this case, and finds that these dates are accurately stated in the objection.

Preferred Jewelers has filed opposition to the objection in the form of a letter signed by its manager. Local District Court Rule 183(a), incorporated herein by LBR 1001-1(c), provides that "[a] corporation or other entity may appear only by an attorney." In light of this rule, the court would be justified in not considering the opposition. However, even if the court were to consider the opposition, it would not change the outcome of the debtors' objection because it does not address the issue raised by the objection; namely, that Preferred Jewelers' proof of claim was filed late. The opposition merely recites the belief of Preferred Jewelers' manager that the debtors acquired certain collateral of Preferred Jewelers through misrepresentation.

Because Preferred Jewelers does not deny that its proof of claim was filed late, and because Preferred Jewelers offers no reason the lateness of its proof of claim should be excused, the objection will be sustained. The objection does not request any ruling from the court concerning the effect of the debtors' plan or this chapter 13 case on Preferred Jewelers' right to its alleged collateral, if any, and the court's ruling on the objection will have no effect as to that issue.

The objection will be sustained by minute order. No appearance is necessary.

8. 13-27613-D-13 JAMES/JENNY BRADLEY — MOTION TO VALUE COLLATERAL OF WELLS FARGO, N.A.
JAD-1 — 6-7-13 [11]

Final ruling:

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

9. 13-20014-D-13 CAROL SMITH-DUPREE — MOTION TO CONFIRM PLAN
DEF-1 — 6-11-13 [24]

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. 11-26422-D-13 KEVIN/IDA GRIMES — MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK
ALB-1 — 6-11-13 [29]

Final ruling:

This is the debtors' motion to value collateral of JPMorgan Chase Bank (the "Bank"). The motion will be denied for two reasons. First, although the moving parties served the Bank by certified mail to the attention of an officer, pursuant to Fed. R. Bankr. P. 7004(h) ("Rule 7004(h)"), they failed to serve the attorneys who have appeared in this case for the Bank, as required by subd. (1) of Rule 7004(h) [service shall be by certified mail to the attention of an officer unless the institution has appeared by its attorney]. In this case, two different law firms have filed requests for special notice on behalf of the Bank (DNs 8 and 17); the moving parties served one but not the other. Unfortunately, the law firm the moving parties served is the one that filed a proof of claim in this case on behalf of the Bank as holder of the senior deed of trust on this property (Claim No. 5); the moving parties did not serve the law firm that filed a proof of claim on behalf of the Bank as holder of the junior deed of trust that is the subject of the motion (Claim No. 2). Thus, the Bank was not served in accordance with subd. (1) of Rule 7004(h), as required by Fed. R. Bankr. P. 9014(b).

Second, although the notice of hearing correctly states the deadline for the filing of any objection to the motion, it incorrectly states that any objection must be set for a hearing on August 6, 2013. As the motion has already been set for hearing by the debtors' filing of the motion, the respondent is required to file written opposition, but not to set its opposition/objection for hearing.

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

11. 08-22825-D-13 JDP-1 — HECTOR/JOANNE INFANTE — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 7-2-13 [61]

Final ruling:

This is the debtors' motion to value collateral of Wells Fargo Bank. The court is not prepared to grant the motion because the proof of service does not correctly state the date of service or the date the proof of service was signed (the date of both is given as June 2, 2013, whereas the motion and notice of hearing were not signed until June 25, 2013, and the supporting declaration was not signed until June 28, 2013). The court will continue the hearing to August 20, 2013, at 10:00 a.m., the moving parties to file a corrected proof of service no later than August 13, 2013. The hearing will be continued by minute order. No appearance is necessary on August 6, 2013.

12. 13-27931-D-13 AKH-1 — BLANCA CANO — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 6-28-13 [8]

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.

13. 12-41639-D-13 LRR-3 — RAY HUCKINS — MOTION TO CONFIRM PLAN 6-14-13 [65]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons. First, the proof of service is not signed under oath, as required by 28 U.S.C. § 1746. Instead, the declarant states only that the statements in the proof of service are true and correct "to the best of [her] knowledge." This qualification means only that, as far as she knows, the documents were served. This statement is not evidence that the declarant knows, of her personal knowledge, that the documents were served on the date and in the manner stated. Second, the moving party failed to serve the following creditors, who have not filed proofs of claim in this case, at their addresses as listed in the debtor's schedules, as required by Fed. R. Bankr. P. 2002(g)(2): (1) Bank of America for account numbers 325xxxx and 1583; and (2) Chase for short sales of properties in Stone Mountain and Smyrna, Georgia.

The court is aware that, with respect to three out of these four, the debtor has amended his Schedule F to delete the amounts previously listed and to replace the amounts with "Notice Only." The debtor explains in his supporting declaration that he has amended Schedule F "to change creditor's amounts that have not filed a claim to date to 'Notice Only'." Debtor's declaration, filed June 14, 2013, at 2:4-5. This change does not mean the debtor could also delete these creditors from his service list, as he has done. The rules require service on all creditors, not just those that have filed proofs of claim. Fed. R. Bankr. P. 2002(b).

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

14. 11-21740-D-13 DN-1 — RHONDA PRUDEN — OBJECTION TO CLAIM OF GOLDEN STATE COLLECTIONS LLC, CLAIM NUMBER 9, 6-20-13 [40]

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 debtor's objection to claim and the claim will be disallowed in any amount in excess of $1,294. Moving party is to submit an appropriate order. No appearance is necessary.

15. 12-28140-D-13 JCK-4 — ALFONSO/JENNIFER MARTES — MOTION TO MODIFY PLAN, 7-1-13 [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.

16. 10-20241-D-13 TOG-6 — FELIPE/ANA GARCIA — MOTION TO APPROVE LOAN MODIFICATION, 7-3-13 [44]

17. 12-35945-D-13 GFG-91 — CLAUDE/KELEEN BRYANT — MOTION TO CONFIRM PLAN, 6-25-13 [134]

Final ruling:

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

The debtors have filed several amended plans in this case. One was entitled 1st Amended Chapter 13 Plan; two were entitled 2nd Amended Chapter 13 Plan; the most recent two were entitled simply Chapter 13 Plan – Amended. That is, the most recent two amended plans have exactly the same title; however, they differ from each other in significant ways. The proof of service indicates only that an Amended Chapter 13 Plan was served; thus, the court cannot determine which of the amended plans was actually served.

The matter is complicated by the fact that the motion states that the debtors "make this motion to confirm their Amended Chapter 13 Plan, filed with the Court on April 19, 2013," whereas the debtors filed a different amended plan the same day they filed this motion, June 25, 2013. If indeed the debtors intend to seek confirmation of the plan filed April 19, 2013, as the motion states, the court cannot discern a reason for the debtors to file a different amended plan with the motion, on June 25, 2013.

In short, based on the record, the court is unable to determine which of the several plans on file was served with the motion and which of the several plans the debtors wish to confirm. For these reasons, the motion will be denied, and the court need not reach the issues raised by the trustee at this time.

The motion will be denied by minute order. No appearance is necessary.

18. 13-25945-D-13 JEFFREY VAN RYN — MOTION TO CONFIRM PLAN
BSH-1 — 6-25-13 [18]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party filed two different notices of hearing – DNs 19 and 22 – one states that the hearing will be held in Sacramento, the other, that it will be held in Modesto. The notices were filed the same day, and they bear exactly the same title; thus, the court cannot determine which one was served.

As a result of this notice defect, the motion will be denied, and the court need not reach the trustee's opposition at this time. The motion will be denied by minute order. No appearance is necessary.

19. 13-25945-D-13 JEFFREY VAN RYN — MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK
BSH-2 — 6-25-13 [23]

20. 11-45746-D-13 ALEJANDRO/ROSALINA CARRILLO — MOTION TO MODIFY PLAN
JCK-10 — 6-21-13 [94]

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. 12-26246-D-13 MILFORD MULLINS
PK-2

CONTINUED MOTION TO MODIFY PLAN
4-17-13 [30]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtor's motion to confirm a modified chapter 13 plan. The motion was originally noticed for hearing on June 4, 2013. The court issued a tentative ruling shortly before that hearing date that included the following:

> **An earlier motion to confirm the same plan was denied because the moving party had failed to serve certain creditors listed on his Schedule F and also because he had failed to serve the creditor listed on his Schedule D. The court stated in its ruling on that motion: "Although the creditor is described on Schedule D as having foreclosed on real property, it is listed as holding a claim for $494,291, and thus, should have been served."**
>
> **This time, the moving party served the creditors listed on his Schedule F who had not been served with the prior motion. He did not, however, serve the creditor listed on his Schedule D. The debtor chose to list this creditor, Carrington Mortgage, on his Schedule D filed in this case, and has not amended that schedule to delete that creditor. Thus, from what the court can tell, that creditor should have been served with this motion, as required by Fed. R. Bankr. P. 2002(b). The debtor has failed to offer an explanation for this omission. As a result, the court intends to deny the motion.**

The debtor's counsel appeared at the June 4, 2013 hearing, and the court continued the hearing to this date to allow the debtor to cure this service defect. As of this date, however, the debtor has failed to serve the motion or a notice of continued hearing on Carrington Mortgage, and has filed nothing that would explain this failure. As a result, the motion will be denied by minute order for failure to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). No appearance is necessary.

22. 13-22646-D-13 DAVID/TUESDAY GRAHAM
SJS-2

CONTINUED MOTION TO CONFIRM PLAN
5-7-13 [33]

Final ruling:

The relief requested in the motion is supported by the record, the trustee having withdrawn his opposition, and no other 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. 08-29547-D-13 CLH-2 — PATRICK SAMSON — CONTINUED OBJECTION TO CLAIM OF CENTRAL MORTGAGE COMPANY, CLAIM NUMBER 2
3-5-13 [39]

24. 12-36447-D-13 JAD-3 — ALVARO MONCADA — MOTION TO MODIFY PLAN
6-6-13 [73]

25. 12-36447-D-13 JAD-4 — ALVARO MONCADA — OBJECTION TO CLAIM OF JP MORGAN CHASE BANK, CLAIM NUMBER 5
6-6-13 [69]

Final ruling:

This is the debtor's objection to the claim of JPMorgan Chase Bank (the "Bank"), Claim No. 5 on the court's claims register in this case. On June 18, 2013, the Bank withdrew this claim; as a result, the debtor's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

26. 13-24047-D-13 MDL-5 — EDMUNDO/MARIA MOLINA — MOTION TO APPROVE LOAN MODIFICATION
6-26-13 [58]

Tentative ruling:

This is the debtors' motion for authorization to enter into a loan modification agreement regarding the mortgage loan on their residence. The trustee has filed opposition to the motion. For the following reasons, the court agrees with the trustee, and the motion will be denied.

The proposed loan modification would lower the debtors' mortgage payment from $3,353 to $1,642 per month, saving the debtors $1,711 per month. The trustee's objection is that the debtors have filed a motion to confirm an amended chapter 13 plan, which is set for hearing on August 20, 2013, but the amended plan fails to increase the debtors' plan payment ($92 per month) or the dividend to general

unsecured creditors (1%) despite the significant savings the debtors would realize from the loan modification. The trustee adds that the debtors have failed to file amended Schedules I and J that accurately reflect their current budget.

The debtors filed amended Schedules I and J on May 13, 2013 that, as the trustee points out, would not be currently accurate if the loan modification were approved, because they show the debtors' mortgage payment as $3,353, not the $1,642 it would be under the loan modification. However, given the relatively recent date of those schedules and given that they were signed by the debtors under oath, the court assumes they are otherwise currently accurate. If the mortgage payment were reduced to the amount that would be required under the loan modification, the debtors would have $1,803 in monthly net income, rather than the $92 shown on the May 13, 2013 schedules. Thus, considering that the loan modification would result in a very significant savings to the debtors on their mortgage payment, and given that they have proposed a plan under which they would share none of those savings with their creditors, the court concludes that the loan modification is not proposed in good faith, and the motion will be denied.

The court will hear the matter.

27. 13-26651-D-13 ASW-1 — SALVADOR DELA CRUZ — OBJECTION TO CONFIRMATION OF PLAN BY BANK OF NEW YORK 6-18-13 [22]

Final ruling:

This case was dismissed on July 3, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

28. 13-26651-D-13 RDG-2 — SALVADOR DELA CRUZ — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 6-28-13 [30]

Final ruling:

This case was dismissed on July 3, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

29. 13-26651-D-13 RDG-3 — SALVADOR DELA CRUZ — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 6-28-13 [34]

Final ruling:

This case was dismissed on July 3, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

30. 11-45952-D-13 JOSE/DELIA CAMACHO — MOTION TO MODIFY PLAN
TBK-4 — 6-14-13 [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.

31. 09-27356-D-13 HENRY/THERESA INGRAM — MOTION TO MODIFY PLAN
JCK-8 — 6-28-13 [125]

Final ruling:

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

32. 13-24557-D-13 ZENAIDA HERRERA — MOTION TO VALUE COLLATERAL OF CALHFA MORTGAGE ASSISTANCE CORPORATION
HWW-4 — 6-27-13 [39]

Final ruling:

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

33. 13-28157-D-13 GREGORY/TOBIAN HENRY — MOTION TO VALUE COLLATERAL OF CITIMORTGAGE, INC.
LRR-1 — 6-18-13 [8]

Final ruling:

This is the debtors' motion to value collateral of CitiMortgage, Inc.. The motion will be denied because the moving parties failed to serve CitiMortgage in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served CitiMortgage (1) by certified mail to the

attention of a president, (2) by certified mail to its agent for service of process, as registered with the California Secretary of State, and (3) by first-class mail at a post office box address, with no attention line. The third method was insufficient because service on a corporation must be to the attention of an officer, managing or general agent, or agent for service of process. Fed. R. Bankr. P. 7004(b)(3). The first two methods were insufficient because service on a corporation that is not an FDIC-insured institution must be by first-class mail, not certified mail. Id.

This distinction is important. Rule 7004(h), which governs service on an FDIC-insured institution, requires service by certified mail, whereas service on a corporation, partnership, or other unincorporated association must be by first-class mail. See preamble to Rule 7004(b). If service on a corporation, partnership, or other unincorporated association by certified mail were appropriate, the distinction in the manner of service, as between Rule 7004(h) and Rule 7004(b)(3), would be superfluous.

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

34. 12-37959-D-13 ERIN DONOVAN — MOTION TO MODIFY PLAN
CJY-2 — 6-24-13 [28]

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. 13-26459-D-13 MICHAEL CARLETON — OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, N.A.
PD-1 — 6-26-13 [26]

Final ruling:

The objection will be overruled as moot. The debtor filed an amended plan on July 10, 2013, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

36. 13-26459-D-13 MICHAEL CARLETON — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
RDG-3 — 6-28-13 [30]

Final ruling:

The objection will be overruled as moot. The debtor filed an amended plan on July 10, 2013, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

37.	11-29060-D-13 CLH-1	CARL SMITH AND KATHERINE JOHNSON	MOTION TO FILE CLAIM AFTER CLAIMS BAR DATE 7-9-13 [42]

Final ruling:

This is the debtors' motion to allow a late-filed claim of CitiMortgage, Inc. ("Citi"). The motion will be denied for two reasons.

First, allowance of the late-filed claim would result in the trustee ceasing to make payments to unsecured creditors who have thus far, according to the motion, been receiving payments under the debtors' confirmed plan. However, the moving parties served only the chapter 13 trustee and the United States Trustee, and failed to serve any creditors. Instead, the moving parties make the conclusory statement that allowance of the late-filed claim will result in no prejudice to creditors. Because the rights of creditors under the confirmed plan may be affected by the outcome of the motion, the motion will be denied because those creditors were not served.

Second, the motion will be denied because it is not supported by any legal authority, whereas the legal authority concerning the allowance of late-filed claims in chapter 13 cases does not support the debtors' position. The facts concerning Citi's claim are these. The claims bar date in this case for all creditors except governmental units was August 23, 2011. Citi, which holds a first position deed of trust against the debtors' residence, did not file a proof of claim. On November 14, 2011, the trustee's office served a Notice of Filed Claims on the debtors and their then attorney, advising them of the August 23, 2011 claims bar date and of the deadline for the debtors to file claims on behalf of creditors, pursuant to then General Order 05-03. That deadline was January 13, 2012. The debtors did not file a proof of claim on behalf of Citi.

On July 1, 2013, the debtors' new attorney filed a proof of claim on behalf of Citi for $256,500, including $16,500 in pre-petition arrearages. On July 11, 2013, a proof of claim was filed in Citi's name for $254,843.37, including $16,500 in arrearages; that claim, however, was not signed. Finally, on July 11, 2013, a proof of claim was filed by Citi for $254,843.37, including $16,500 in arrearages; that claim was signed by a bankruptcy specialist for Citi.

The motion states that the debtors' plan in this case provided for the cure of $16,500 in arrearages due Citi at $325 per month, that Citi did not file a timely proof of claim, that the debtors' original counsel did not file a claim on behalf of Citi to provide for those arrears, and that as a result, unsecured creditors have been receiving a distribution in excess of the amount provided for in the plan (0%), while Citi has not been paid on its arrears claim. The motion states that the allowance of the late claim on behalf of Citi will result in no prejudice to creditors, who have already received more than they would have if Citi had filed a timely proof of claim. The debtors' prior counsel has agreed that if the court allows Citi's late claim, he will personally pay into the plan the amount that unsecured creditors have received so that those creditors will retain what they have already received and the debtors will receive the benefit of their original filed plan.

Under applicable rules, the court lacks discretion to allow the late-filed

claim. Pursuant to Fed. R. Bankr. P. 9006(b)(3), the court may enlarge the time for taking action under Fed. R. Bankr. P. 3002(c) (time for filing proofs of claim) only to the extent and under the conditions stated in that rule. Rule 3002(c), in turn, provides for the allowance of late-filed claims in a variety of circumstances, none of which is present here. Instead, in the circumstances presented here, the court lacks discretion to enlarge the time for filing claims. 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"); In re Johnson, 262 B.R. 831, 845 (Bankr. D. Idaho 2001) ("Given the unambiguous language of Rule 9006(b)(3) and controlling case law, this Court concludes it is simply not permitted to equitably enlarge the time period for filing proofs of claim absent facts which place Creditors within one of the express exceptions of Rule 3002."). Even if excusable neglect were shown (and it has not even been suggested), the court would lack discretion to allow the claim, because excusable neglect is not a basis for allowing a late-filed claim. Dicker v. Dye (In re Edelman), 237 B.R. 146, 153 (9th Cir. BAP 1999) ["excusable neglect . . . does not apply to Rule 3002(c)."].

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

38.	12-33960-D-13 PGM-4	JACK/RHONDA DINUBILO	MOTION TO CONFIRM PLAN 6-19-13 [110]

39.	13-26962-D-13 SBS-1	SALVADOR MOYA AND ROSALBA HUERTA	MOTION TO CONFIRM PLAN 6-11-13 [13]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons. First, the plan contains as an attachment an "Attachment M-1" – motion to avoid a judicial lien. Pursuant to that motion, the debtors attempt to treat as unsecured a claim secured not by a judicial lien but, according to the debtors' Schedule F, a second mortgage against the debtors' residence. Thus, the court assumes the debtors' intention is to value the collateral of the second mortgage holder at $0, and thus, to treat its claim as unsecured.

However, although the court's earlier chapter 13 procedures allowed for the attachment to a chapter 13 plan of motions to value collateral and motions to avoid judicial liens, under the court's revised local rules, effective May 1, 2012, those types of motions are no longer made by attachments to the plan, but must be brought as stand-alone motions. See LBR 3015-1(j) (requiring such motions to be filed, served, and set for hearing before or in conjunction with confirmation of the plan). Because the debtors have failed to file an appropriate motion for an order determining the claim of the junior mortgage holder to be unsecured, the motion to confirm the plan will be denied.

Second, the proof of service of the motion does not comply with Guideline 4(b), (d), and (e) of the court's Revised Guidelines for the Preparation of Documents, EDC Form 2-901, as required by LBR 9004-1(a), because it does not contain a caption or the other information required by that section.

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

40. 13-24765-D-13 JAB-1 — DAVE SCHEIDT — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 5-29-13 [21]

41. 12-41866-D-13 CJY-4 — ROSE LAW — MOTION TO MODIFY PLAN 7-2-13 [31]

42. 13-24869-D-13 MKM-1 — FRANK FLORIO — MOTION TO CONFIRM PLAN 6-21-13 [23]

43. 13-26069-D-13 GINA TOSCANO — MOTION TO VALUE COLLATERAL OF FINANCIAL CENTER CREDIT UNION
PGM-1 — 6-24-13 [24]

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.

44. 13-26069-D-13 GINA TOSCANO — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
RDG-1 — 6-17-13 [21]

45. 10-26872-D-13 LANCE/RACHELLE TRAMMELL — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC
MCC-4 — 6-19-13 [90]
STAY KELLY SISNEROZ AND SAM SISNEROZ VS.

Tentative ruling:

This is the motion of Sam Sisneroz and Kelly Sisneroz (the "Creditors") for relief from the automatic stay to allow them to continue the prosecution of their claims against debtor Lance Trammell in state court. (Where used in the singular, the "debtor" will mean Lance Trammell.) Lance Trammell and Rachelle Trammell (the "debtors") have filed opposition to the motion, and the Creditors have filed a reply. For the following reasons, the motion will be granted.

In 2007, the debtor filed a breach of contract action against the Creditors in Contra Costa County Superior Court, commencing Case No. MSC07-00819 (the "state court action"). The Creditors, in turn, filed a cross-complaint against the debtor centering on alleged construction defects. In 2010, the debtors filed their petition commencing this chapter 13 case, along with a chapter 13 plan under which they proposed to pay 0% to their general unsecured creditors. The court confirmed the plan with the proviso that the dividend to such creditors would be six-tenths of one percent, or 0.6%. The Creditors filed a timely proof of claim for $998,000; the debtors did not object to the claim. Thus, under the confirmed plan, the Creditors could expect to receive a total of $5,988 through the plan. The plan was a 36-month plan; it appears the debtors have completed their plan payments and are awaiting entry of a discharge.

The Creditors now seek relief from stay to continue with the state court action for the sole purpose of collecting from the proceeds of one or more insurance policies covering the debtor. Factors the court is to consider in determining whether to lift the stay to allow state court litigation to continue include "considerations of judicial economy and the expertise of the state court, as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." Kronemyer v. Am. Contrs. Indem. Co. (In re Kronemyer), 405 B.R. 915, 921 (9th Cir. BAP 2009) (citations omitted). The most significant factor in this case is that there will be no prejudice to the debtors from lifting the stay because the Creditors do not intend to pursue collection of any judgment against the debtors personally or against any of their assets other than proceeds of available insurance coverage. Relief from stay is typically granted in such circumstances (see In re Cini, 2012 Bankr. LEXIS 2865, *22 (Bankr. D. Mont. 2012) (footnote omitted) ["[i]n this Court, motions to modify stay seeking relief limited to insurance coverage routinely are granted"]), and there is no reason to depart from the general rule here.

The reasons for the rule are simple. First, the automatic stay generally protects only the debtor, property of the debtor, and property of the estate; it does not protect non-debtor parties or their property. Boucher v. Shaw, 572 F.3d 1087, 1092 (9th Cir. 2009). Thus, it does not protect "guarantors, sureties, corporate affiliates, or other non-debtor parties liable on the debts of the debtor." Id. 1 Second, the policy proceeds either are not property of the estate or are of such de minimis value to the estate that the court need not be concerned with protecting them. See In re Endoscopy Ctr. of S. Nev., LLC, 451 B.R. 527, 543 (Bankr. D. Nev. 2011). Finally, the debtors' discharge, when it is entered, will have no effect on the liability of the debtor's insurance carriers. With an exception not applicable here, "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." § 524(e). In fact, had the Creditors waited until after the debtors' discharge is entered, they would not even have needed a court order to proceed with the state court action. 2

The debtors' theory runs counter to all of these fundamental bankruptcy principles. The debtors contend the Creditors are precluded by the doctrine of res judicata, now known as claim preclusion, from pursuing their claims in the state court action by (1) their filing of a proof of claim in this bankruptcy case; (2) their failure to object to the dischargeability of the debtor's debt to them; (3) their failure to object to confirmation of the debtors' chapter 13 plan; and (4) their failure to appeal from the order confirming the plan. The notion is flawed for several reasons, not the least of which is that it would effectively write insurance policies out of existence any time a defendant in a state court action is forced or chooses to file a chapter 13 case, thereby affording insurance carriers everywhere huge financial benefits in no way intended by the framers of the Bankruptcy Code. 3

Second, the debtors do not suggest on what grounds the Creditors should or could have objected to dischargeability of the debt or to confirmation of the plan. Presumably, the debtors believed the plan met the requirements for confirmation; otherwise, they would not have proposed it. Thus, in essence, they are arguing that the law requires a creditor to waste money and take up the court's time in meaningless exercises in order to protect his or her right to pursue available insurance proceeds.

Third, at least as to the failure to object to dischargeability and to plan

confirmation, the debtors' theory fails the test for application of claim preclusion. Claim preclusion bars litigation in a subsequent action of any claims that were raised or could have been raised in a prior action. Western Radio Servs. Co. v. Glickman, 123 F.3d 1189, 1192 (9th Cir. 1997). The doctrine is applicable whenever there is "(1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties." Id.

The identity of claims test requires the court to consider four factors: "(1) whether the two suits arise out of the same transactional nucleus of facts; (2) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (3) whether the two suits involve infringement of the same right; and (4) whether substantially the same evidence is presented in the two actions." ProShipLine Inc. v. Aspen Infrastructures Ltd., 594 F.3d 681, 688 (9th Cir. 2010). The plan confirmation process determined only that the debtors' plan met the requirements for confirmation of a chapter 13 plan. It did not determine any issues regarding the Creditors' claim, and in particular, it did not determine the Creditors' rights as third-party beneficiaries of the debtor's contract of insurance with his carrier. Thus, the Creditors' failure to object to plan confirmation (or to appeal from the order confirming the plan) meets none of these four tests.

As to nondischargeability of the debt, because the Creditors' cross-complaint against the debtor in the state court action contains a misrepresentation cause of action, there is a partial cross-over between the facts alleged and evidence that will be presented in that action and those that would have been alleged and presented in a nondischargeability action; thus, the Creditors' failure to object to dischargeability meets two of the tests. However, the rights and interests established by the Creditors' failure to object to dischargeability will not be destroyed or impaired by prosecution of the state court action, so long as the Creditors limit their recovery to available insurance proceeds, as they have agreed to do. In entering the debtors' discharge in this bankruptcy case, the court will be establishing the debtors' right to a discharge of their personal liability on the debt: that right will not be destroyed or impaired by allowing the Creditors to pursue collection of insurance proceeds. See § 524(e); Siegel v. Federal Home Loan Mortg. Corp., 143 F.3d 525, 531 (9th Cir. 1998) ["a discharge in bankruptcy does not end a party's obligation, but merely prevents one method of collection."].

Thus, the debtors' claim preclusion argument fails because the rights and interests established in this chapter 13 case, insofar as the debtors and the Creditors are concerned, are only these: (1) the debtors' right to receive a discharge of their personal liability on the debt to the Creditors, and (2) the Creditors' right to be paid by the debtors through their chapter 13 plan a pro rata share of the amount of their allowed claim, based on the ratio of the claim to all other general unsecured claims filed in the case. And this is where the real flaw in the debtors' analysis becomes clear. According to the debtors, "[t]he sole purpose for [this] Motion is to attack the bankruptcy judgment in the State Court action, thereby invalidating the [bankruptcy] Court's final judgment awarding [the Creditors] $5,988." Opposition to Motion for Relief of Automatic Stay, filed July 16, 2013 ("Opp."), at 8:9-10. This court did not "award" the Creditors $5,988. If anything, it "awarded" them $998,000, in that the claim was allowed in that amount.4 The $5,988 represents nothing more than the portion of that "award" the Creditors were able to collect from the debtors through their chapter 13 plan.

Returning to the factors the court is to consider in evaluating this motion, the remaining factors also weigh in favor of lifting the stay. The Creditors'

claims are all based on California law; there is nothing bankruptcy related about them. The debtors do not even suggest they will be prejudiced by allowing the state court action to proceed; the best they can do is to suggest that relief from stay would be "prejudicial to [their] insurer's defense" (Opp. at at 3:3) because three years have passed since the debtors' chapter 13 filing stayed the continuation of the state court action. The debtors offer no authority for the proposition that a debtor's insurance carrier is one of the "parties" the court should consider in assessing the prejudice that would flow from lifting the stay.

However, even if that is a factor for consideration, the prejudice to the Creditors from being unable to litigate their claims against the debtor anywhere; that is, the prejudice of losing in their entirety claims the Creditors believe to be covered by some $1 million in insurance, settling only for the $5,988 they can expect to receive under the debtors' confirmed chapter 13 plan (0.6% of the amount of their allowed claim), far outweighs any prejudice to the insurance carrier from whatever delays have been caused by the pendency of the chapter 13 case and the Creditors' failure to move for relief from stay sooner. The debtors have not suggested that anything prevented their insurance carrier from itself moving for relief from stay if it was concerned about the preservation of evidence or otherwise about expeditiously litigating the case.5

No one has suggested the claims should be resolved in this court; thus, there is no question of balancing judicial economy as between this court and the state court. The debtors contend that granting relief from stay at this stage, when distributions under the plan have been completed, "would interfere with the administration of the [bankruptcy] estate in that it would interfere with the accounting of the estate and delay the discharge of the bankruptcy proceedings." Opp. at 9:18-19. This is simply incorrect. There is no reason to suppose the resumption of the state court action will have any effect on the trustee's issuance of his final report and account, on entry of the debtors' discharge, or on the closing of the case.

Finally, the debtors make a confusing argument about the burden on the state court from having to decide which of the Creditors' claims are covered by the applicable insurance policy and which are not. This is a burden the state court would have had absent the bankruptcy filing; there is no authority for the proposition that this court needs to be concerned with protecting the state court from that burden. The debtors conclude with this statement:

> Since [the Creditors] assert a myriad of non-covered damages for fraud, defective workmanship, disgorgement, etc, it will unreasonably burden the trial court to determine which of the claims should proceed to trial and which are barred by the Bankruptcy Court's judgment.

Opp. at 9:25-10:1. However, sorting out covered from non-covered claims is something the state courts handle all the time. The answer to the question which of the Creditors' claims are barred by the proceedings in this court is simple: None. The only thing that is barred is any attempt on the part of the Creditors to pursue collection of any judgment against the debtors personally or against any of their assets other than proceeds of available insurance coverage. (And so as to avoid a double recovery, the Creditors' collection on any judgment must be offset by the amount they have received from the debtors through the plan, $5,988.)

For the reasons stated, the court intends to grant the motion by minute order.

---

1 In fact, the only reason the Creditors needed to seek relief from stay here is that the state court action is nominally against the debtor. See Cini, 2012 Bankr. LEXIS 2865, at *20-22 (requiring that plaintiff seek relief from stay even where he intended to pursue insurance proceeds only).

2 When the discharge is entered, the automatic stay will be terminated (§ 362(c)(2)(C)), and the discharge will not preclude the Creditors from proceeding against the insurance company and against the debtor, nominally.

> The § 524(a)(2) discharge injunction prohibits only actions to recover a debt as a personal liability of the debtor. Where the purpose of the action is to collect from a collateral source, such as insurance or the [Uninsured Employers Fund], and the plaintiff makes it clear that it is not naming the debtor as a party for anything other than formal reasons, no bankruptcy court order is necessary.

Ruvacalba v. Munoz (In Re Munoz), 287 B.R. 546, 550 (9th Cir. BAP 2002).

3 [I]t makes no sense to allow an insurer to escape coverage for injuries caused by its insured merely because the insured receives a bankruptcy discharge. "The 'fresh-start' policy is not intended to provide a method by which an insurer can escape its obligations based simply on the financial misfortunes of the insured." "Such a result would be fundamentally wrong."

Houston v. Edgeworth (In re Edgeworth), 993 F.2d 51, 54 (5th Cir. 1993) (citations omitted).

4 "A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." § 502(a).

5 A "party in interest" for purposes of standing to move for relief from stay "can include any party that has a pecuniary interest in the matter, that has a practical stake in the resolution of the matter, or that is impacted by the automatic stay." In re Marks, 2012 Bankr. LEXIS 5788, *19 (9th Cir. BAP 2012).

46. 13-26174-D-13 JOSE/NORMA ACOSTA — MOTION TO VALUE COLLATERAL OF SPRINGLEAF FINANCIAL
PLL-2 — 7-3-13 [40]

Final ruling:

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

47. 13-26174-D-13 JOSE/NORMA ACOSTA — OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
RDG-2 — 6-26-13 [27]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition or response to the objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to the debtors' claim of exemptions. The court notes that the debtors filed a purported amended Schedule C on July 1, 2013, which, had it been properly filed, would have rendered the trustee's objection moot. However, the amended schedule was not filed under cover of an amendment cover sheet (EDC Form 2-015 (Rev. 11/11)), and was not otherwise verified, as required by Fed. R. Bankr. P. 1008. Thus, the purported amended schedule (along with the purported amended Schedule D filed the same day) will be stricken from the record, and the trustee's objection will be sustained. Moving party is to submit an appropriate order. No appearance is necessary.

48. 13-27075-D-13 VICTOR/RENEE PADILLA — MOTION TO CONFIRM PLAN
DEF-2 — 6-19-13 [17]

Tentative ruling:

This is the debtors' motion to confirm their initial chapter 13 plan. The trustee has filed opposition. For the following reason, the motion will be denied.

The plan proposes to pay the claim of Wells Fargo Home Mortgage, secured by a first position deed of trust against a property alleged by the debtors to be a rental property, at less than the full amount of the claim, whereas the court intends to deny the debtors' motion to value the collateral securing that claim. See tentative ruling on Item 49 on this calendar. As a result of the denial of that motion, the plan does not comply with LBR 3015-1(j);the motion to confirm the plan will be denied, and the court need not reach the trustee's opposition at this time.

The court will hear the matter.

49. 13-27075-D-13 VICTOR/RENEE PADILLA — MOTION TO VALUE COLLATERAL OF WELLS FARGO HOME MORTGAGE, INC.
DEF-3 — 6-24-13 [25]

Tentative ruling:

This is the debtors' motion to value collateral of Wells Fargo Home Mortgage ("Wells Fargo") consisting of a first position deed of trust against the real property commonly known as 4097 Lakeview Drive, Ione, California (the "property"). Because the debtors seek to "strip down" a first position deed of trust, they must demonstrate that the property is not their principal residence. The motion states that the property "is NOT used by the Debtor[s] as his [their] principal residence." However, there is no evidence in support of that factual allegation, and the debtors' schedules and statement of financial affairs do not support the conclusion that the property is not their principal residence.

First, there are no unexpired leases listed on the debtors' Schedule G. Second, the debtors have listed no income from real property on their Schedule I, and their Statement of Financial Affairs lists no income during the two years preceding the commencement of the case from any source other than wages, the Employment Development Department (presumably, unemployment income), and pension income. That is, the Statement of Financial Affairs lists no rental income at all. Finally, if the property is generating no income, as appears very clear from the schedules and statements, the court can think of no good reason the debtors would want to pay $2,387.65 per month on the secured portion of the claim, as proposed in their amended plan (Item 48 on this calendar) unless the property is actually their residence. The court therefore concludes that the property is the debtors' principal residence, and the motion will be denied. (To the extent, if any, the debtors argue in response that they are paying 100% of their general unsecured debt anyway, the answer is simply that although the plan lists a dividend of 100%, that is not accurate because the estimate of general unsecured claims in the plan, $2,387.65, does not include the stripped-off portion of Wells Fargo's claim, $153,926, that would be part of the general unsecured class if this motion were granted.)

The court will hear the matter.

50.	13-27976-D-13 DN-1	GEORGE GALBADORES	MOTION TO VALUE COLLATERAL OF OLD REPUBLIC INSURANCE COMPANY 7-8-13 [14]

Final ruling:

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

51.	13-26085-D-13 TOG-1	ANTONIO SAENZ AND MARIA CAMPUZANO	MOTION TO CONFIRM PLAN 6-18-13 [24]

Final ruling:

This is the debtors' motion to confirm a chapter 13 plan. The motion will be denied because the moving papers – the motion, notice of hearing (in two places), and supporting declarations – all incorrectly give the location of the hearing as the Modesto courthouse. The court recognizes the motion was brought pursuant to LBR 9014-1(f)(1) (written opposition required), and that no party-in-interest has filed opposition to the motion; nevertheless, the rules require that a notice of hearing state the location of the courthouse where the hearing will be held. LBR 9014-1(d)(2). It is fundamental that a party's moving papers must advise parties-in-interest of the correct location. Otherwise, parties moving for relief could simply omit the location of the hearing entirely from a notice under LBR 9014-1(f)(1) if they were willing to take the risk that no one would file written opposition, and the rule would be meaningless.

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

52. 13-21186-D-13 SILVIA QUIROGA — MOTION TO CONFIRM PLAN
OAG-1 — 6-6-13 [47]

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 plan provides for the secured claim of Springleaf Financial at less than the full amount of the claim, whereas the debtor has failed to file an appropriate motion to determine the value of the collateral securing that claim, as required by LBR 3015-1(j); and (2) the plan provides for priority claims of the IRS in the total amount of $21,987.79, whereas the IRS has filed a proof of claim for $38,859.56 priority; thus, the plan fails to comply with § 1322(a)(2) of the Bankruptcy Code.

For the reasons stated, 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.

53. 10-51090-D-13 MIGUEL/MARISOL OROZCO — OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
RDG-3 — 6-14-13 [94]

Final ruling:

The matter is resolved without oral argument. This is the trustee's objection to the debtors' purported claim of exemption of $62,500 in funds derived from their adversary proceeding against Chase Home Finance. The objection will be sustained because the exemption has never been properly claimed. The debtors' purported amended Schedule C, which was filed June 10, 2013 and which contains the claim of exemption to which the trustee objects, was not filed under cover of an amendment cover sheet (EDC Form 2-015 (Rev. 11/11)), and was not otherwise verified, as required by Fed. R. Bankr. P. 1008. Thus, the exemption of the funds was not properly claimed in the first instance.

The objection will be sustained for that reason. For the guidance of the parties, however, the court adds that even if the exemption were claimed by way of a verified claim of exemption, without further evidence, the court would sustain the objection anyway. The debtors have filed a response to the objection that indicates they have misunderstood both the objection and the court's ruling on their motion to approve their compromise with Chase Home Finance, heard on July 16, 2013. In a tentative ruling on that motion, the court expressed its concern that the compromise was conditioned on the debtors' exemption of a portion of the settlement proceeds being "approved." The court noted that the trustee had filed an objection to the debtors' claim of exemption, which was set for hearing on August 6, and concluded that the court would not approve the compromise at the expense of the right of creditors and the trustee to object to the debtors' claim of exemption. It was this condition of the compromise – that the debtors' claim of exemption be approved – that the debtors agreed to remove from the compromise. The removal of that condition was the basis on which the court agreed to approve the compromise.

The debtors now indicate, in their response to the trustee's objection to exemptions, that they are in the process of circulating a proposed order on their

motion to approve the compromise, and that the proposed order satisfies the court's concern expressed at the July 16 hearing. The response states that a copy of the proposed order is attached to the response; however, no such copy is attached, and the court cannot determine whether the proposed order would be acceptable to the court. More troubling is the debtors' conclusion, in their response to this objection, that "Once this Order Approving Compromise is approved by the Court, the Trustee's objection [to exemption] should be fully resolved." This statement misses the point of the court's tentative ruling for the July 16 hearing, which was that the court would not approve the compromise if it was conditioned on the debtors' claim of exemptions being approved. In other words, the court would not approve the compromise unless it left open; that is, unresolved, the trustee's objection to exemptions.

The trustee's objection is that the debtors have claimed proceeds of the settlement in the amount of $62,500 as exempt pursuant to Cal. C. Civ. Proc. § 703.140(b)(11)(E), which permits the exemption of payments in compensation of loss of future earnings to the extent reasonably necessary for the debtors' or their dependents' support, whereas the debtors have not provided any evidence that would allow the court to determine whether the $62,500 was in compensation of loss of future earnings and whether those funds are reasonably necessary for the support of the debtors and any dependents of the debtors. The debtors' response to the objection does not mention either of these issues, and they have provided no evidence as to either.

Again, the point of the court's tentative ruling on the motion to approve the compromise was that the compromise would be approved only if it was not conditioned on resolution of those questions in the debtors' favor; that is, only if it left those questions open for separate resolution on their own merits. Thus, the debtors' statement in their response that once the compromise is approved, the trustee's objection to exemptions "should be fully resolved" is incorrect.

Because the debtors' exemption of the $62,500 was not properly claimed, the objection will be sustained. Moving party is to submit an appropriate order. No appearance is necessary.

54. 12-20091-D-13 UKPONGETE/KETTY UWEH — MOTION TO MODIFY PLAN
DN-1 — 6-20-13 [28]

Tentative ruling:

This is the motion of debtor Ketty Uweh to modify the debtors' confirmed chapter 13 plan. (Debtor Ukpongete Uweh died on May 20, 2013.) The trustee has filed opposition; the debtor has filed a reply.

The confirmed plan in this case calls for plan payments of $3,340 per month and a 47% dividend to general unsecured creditors. Under the proposed modified plan, the plan payment would be reduced to $2,770 per month, and the dividend to general unsecured creditors would be reduced to 10%. In light of these changes, the trustee has objected on two grounds: (1) that the debtor's ongoing voluntary 403(b) plan contribution, $890 per month, may be excessive, and (2) that the debtor's two adult children, who were 19 and 22 when the case was filed and are now at least 20 and 23, are living in the debtor's home but not contributing to the household expenses.

In response to the trustee's opposition, the debtor has filed a declaration and amended Schedules I and J that differ significantly from the amended schedules she filed at the time she filed this motion. First, she states that as a result of depression and stress following the death of her husband, and because she has used up her sick time and vacation time, she has had to go out on medical leave, and expects to be on medical leave for many months. Thus, she is receiving medical leave pay of $4,476 per month and is no longer paying into the 403(b) plan, whereas at the time this motion was filed, she was making $6,118 per month net (after deducting the 403(b) plan contribution, $890).

Second, the debtor states that her two adult children who live with her are both students, and that the 23-year old has been attempting to run the deceased debtor's business and is drawing $1,700 to $1,800 per month. Thus, the debtor has included $1,750 per month on her amended Schedule I. With these changes (and with an increase of $100 in the household food budget over the amount shown on the amended Schedule J filed just six weeks earlier), the debtor's monthly net income is shown as $2,778, virtually the same as the $2,770 shown at the time this motion was filed.

The court will hear from the trustee concerning the debtor's response. The court will hear the matter.

55. 12-41494-D-13 SALVADOR ROJAS — MOTION TO VALUE COLLATERAL OF
SAC-4 — ALLY AUTO FINANCING
6-24-13 [77]

Final ruling:

This case was dismissed on July 2, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

56. 11-28198-D-13 JOZH/EUGENIA FAY MENDOZA — MOTION TO MODIFY PLAN
JCK-7 — 6-21-13 [90]

Tentative ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The trustee has not filed opposition; however, the court has the following concern.

The debtors proposed a plan very similar to this one in May 2013. The trustee opposed the motion to confirm that plan, and the court denied the motion, concluding that the debtors had failed to meet their burden of demonstrating that the plan had been proposed in good faith. With the present motion, the debtors have addressed most of the issues raised in the court's ruling on the May plan, but have ignored the following issue, which was discussed at length in that ruling. The debtors have been funding, through their plan, a loan for a vehicle being driven by debtor Jozh Mendoza's father, whereas the father, who had been paying a portion of a seriously front-loaded monthly payment on the loan, believes the financing period is over, and thus, is no longer contributing to the car payment. The court stated in its ruling on the plan proposed in May:

As has become common for the debtors' attorney in other cases, the debtors drastically front-loaded the car payments to the Golden 1 - from the $460 contract payment to $1,727 per month in their original confirmed plan, this despite the fact that Jozh Mendoza's father was contributing only $456 per month toward the car payment. Thus, the debtors shifted to their unsecured creditors an unreasonable amount of the risk of future negative developments in the debtors' financial affairs, developments that have in fact occurred - three times. 1

The court found that the front-loading of the car payments was unnecessary and accrued to the debtors' benefit and that of debtor Jozh Mendoza's father at the expense of the debtors' creditors. The court concluded that if debtor Jozh Mendoza's father in fact drives the vehicle, the expense of the car payment was not reasonable and necessary for the debtors, and the court would not allow any further payment to be made by the debtors on this car loan. The present plan proposes that the debtors will continue to make this car payment, at $309 per month from June 2013 until paid in full, with no contribution from debtor Jozh Mendoza's father. The debtors have ignored this issue in their motion and supporting declaration. As a result, the court concludes that the debtors have failed to meet their burden of demonstrating that the plan has been proposed in good faith, and the motion will be denied.

The court will hear the matter.

---

1 Over the two years and four months this case has been pending, the debtors have reduced the dividend to be paid to general unsecured creditors from 100% to 56%, and then to 21%. In May of this year, they attempted to reduce the dividend to 11.5%; when that did not succeed, they proposed the present plan, which calls for a dividend of 18.6%.

57.	13-26599-D-13 RDG-1	CHRISTOPHER/SONJA IORIO	AMENDED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 7-12-13 [26]

Final ruling:

This case was dismissed on July 25, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

58.	10-41102-D-13 PD-1	RICARDO/CHARITO MEDINA	CONTINUED MOTION TO APPROVE LOAN MODIFICATION 5-24-13 [75]

59. 13-29402-D-13 TBK-1 — RAMSEY/AMEL MOHAMED — MOTION TO EXTEND AUTOMATIC STAY 7-17-13 [8]

60. 13-27314-D-13 RDG-2 — ARACELI DIAZ — OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE RUSSELL D. GREER 7-12-13 [24]

Final ruling:

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

61. 12-91616-D-13 12-9028 GE CAPITAL RETAIL BANK, FSB V. ORTEGA — LORENA ORTEGA — CONTINUED TRIAL RE: COMPLAINT TO DETERMINE DISCHARGEABILITY OF A DEBT 9-7-12 [1]

62. 13-22523-D-13 MOT-1 — BALDEV SINGH AND SANDEEP KAUR — CONTINUED MOTION TO CONFIRM PLAN 5-1-13 [31]

63.	13-26925-D-13 RDG-1	JOSE CHAVEZ AND ESTHER FRANCO DE CHAVEZ	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 7-12-13 [32]

64.	12-39438-D-13 PGM-4	FARON/CORINNE MOYERS	CONTINUED MOTION TO CONFIRM PLAN 4-23-13 [85]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. The matter is resolved without oral argument. This is the debtors' motion to confirm an amended chapter 13 plan. The trustee has filed opposition, and the debtors have filed a reply. For the following reasons, the motion will be denied.

The trustee's opposition raises a number of issues that have been raised before in this case, including discrepancies between the debtors' income as reported on their schedules in this case and as revealed by their tax returns and pay advices, and including the debtors' failure to provide requested documents. The trustee's objections are specific; the debtors' responses are general, and they are unsupported by any evidence. In terms of evidence, the debtors state only that they have "submitted declarations in support of the pay asserted" (Debtors' Reply, filed July 30, 2013 ("Reply"), at 2:17-18); that is, of their income. In fact, the debtors have submitted two declarations in this case, in February and April, in which they addressed their income; the two, DNs 41 and 87, provided the same limited information. The debtors have submitted no declarations or other admissible evidence in response to the following points made by the trustee in his opposition.

(1) The debtors' 2012 tax returns show they received refunds totaling $10,873, whereas they failed to list any anticipated refund on their original or amended Schedules B.1

(2) The refunds evidence the debtors' ability to pay an additional $906 per month into their plan ($10,873 ÷ 12).2

(3) According to their tax return, the debtors' combined employment income in 2012 was $172,344, whereas their most recent Schedule I discloses total combined wage income of $11,258 per month, which works out to $135,101 per year. (And the total shown on the debtors' original Schedule I was $9,206 per month, or $110,472 per year.)3 The trustee claims the debtors had still, as of July 16, 2013, not provided copies of requested pay advices for debtor Faron Moyers for 2013; the debtors' response is just an unhelpful conclusory statement that they have provided everything the trustee has requested.

In addition, in a ruling denying an earlier motion to confirm a plan, the court observed that the debtors had failed to explain why Mr. Moyers expected his income to be so much lower in 2013 than in 2012; the debtors have still provided no response.

(4) The debtors have incorrectly listed and valued their ownership interest in Foothill Ventures, Inc., and a debt owed to them by that entity. The court agrees with the trustee that the debtors' description and valuation on their original and amended Schedules B are confusing, and that their ownership interest and the debt owed to them should be separately listed and valued. In addition, there are serious discrepancies between the assets and liabilities of the corporation, as reported on the balance sheet attached to the corporate tax return and as reported on the debtors' Schedule B. Finally, the trustee concludes from the figures on the corporation's balance sheets that the debtors must have received payments on the loan owed them by the corporation, which supports the conclusion that the debtors' claim against the corporation has value, whereas they have claimed the debt is uncollectible.

Given all of these discrepancies, the court has no trouble concluding that the debtors have failed to meet their burden of demonstrating that the plan has been proposed in good faith, and the motion will be denied. The court would add that the debtors have dragged this case out for nine months without obtaining confirmation of a plan, and without providing satisfactory responses to questions raised by both the trustee and the court. In an earlier ruling, the court found that the debtors had proposed to "retain for their own benefit virtually all of the excess income they had originally chosen not to disclose." DN 74. The court has no reason to suppose the income figures listed on the debtors' most recent Schedule I, which are higher by $2,052 per month than the amounts disclosed on their original Schedule I, were not also accurate (if not understated) on the date of filing, and thus, should have been listed originally. The court will not reward the debtors' repeated delaying tactics by confirming a plan that proposes a significantly lower plan payment for the first five months simply because the debtors failed to disclose their income accurately at the outset.

Finally, the debtors request in their reply that the court hold an evidentiary hearing. First, they did not submit a separate statement identifying each disputed material factual issue and citing the particular portions of the record demonstrating that a factual issue is both material and in dispute, as required by LBR 9014-1(f)(1)(C). Even if they had, however, the court would determine, as permitted by that rule, that an evidentiary hearing is not necessary. The debtors have had every opportunity to submit evidence in support of the motion and in response to the trustee's opposition; the court will not reward their failure to do so by granting their request for an evidentiary hearing. Further, the court has no confidence the debtors would be prepared to present effective admissible evidence if a hearing were held. Their statement that the "Trustee's counsel has not provided any factual record whatsoever as to her opposition" (Reply at 4:4-5) suggests the debtors have not understood the trustee's objections, objections the court finds to be valid and persuasive, and thus, are not prepared to refute them.

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

---

1 On both the original and amended Schedules B, where required to list "other

liquidated debts owed to debtor including tax refunds," the debtors answered None.

2 The trustee also requested information as to how the debtors disposed of the tax refund monies. The debtors' attorney replied (with no admissible evidence) that the debtors paid sales taxes due the State Board of Equalization on what would have been a priority claim. He made no mention of the trustee's other point -- that with the excess taxes apparently being withheld from the debtors' wages, they could afford to pay significantly more to their creditors.

3 The debtors amended their Schedule I to increase debtor Faron Moyers' reported income, and later, amended it again to increase debtor Corinne Moyers' income. They did not contend the income had originally been reported accurately, and had simply increased post-petition. The inference, then, is that it was inaccurately reported in the first place.

65.	08-27639-D-13 DN-3	MICHAEL/KAREN CAYTON	MOTION TO APPROVE LOAN MODIFICATION 7-23-13 [92]
66.	13-26741-D-13 RDG-1	VICTOR/VARNA FACHA	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 7-12-13 [18]
67.	13-26741-D-13 KK-1	VICTOR/VARNA FACHA	OBJECTION TO CONFIRMATION OF PLAN BY HSBC MORTGAGE 7-18-13 [21]

68.	13-27045-D-13 RDG-1	GEORGINA DANIELS-WILLIAMS	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 7-12-13 [18]

69.	13-26962-D-13 RMD-1	SALVADOR MOYA AND ROSALBA HUERTA	OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY 7-17-13 [37]

Final ruling:

The objection will be overruled as moot. The debtors filed an amended plan on June 5, 2013, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

70.	13-27266-D-13 RDG-2	ALBERTO/ALICIA GUERRERO	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 7-12-13 [28]

Final ruling:

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

71.	09-28679-D-13 CJY-3	JAMES HIESTAND AND STEPHANIE REYNA-HIESTAND	MOTION TO INCUR DEBT 7-16-13 [102]

72. 13-23687-D-13 TBK-3 — ANNA PINKEY — MOTION TO VALUE COLLATERAL OF GREEN TREE SERVICING, LLC (2ND D.O.T.) 7-22-13 [33]

Final ruling:

This is the debtor's motion to value collateral of Green Tree Servicing, LLC ("Green Tree"). The motion was brought pursuant to LBR 9014-1(f)(2); thus, ordinarily, the court would entertain opposition, if any, at the hearing. However, the court is not prepared to consider the motion at this time for the following reason.

This is the debtor's second motion to value the same collateral of Green Tree. Green Tree filed opposition to the first motion, and the debtor then withdrew the motion prior to the scheduled hearing date. The debtor served this new motion on Green Tree at three different addresses, but did not serve the attorneys who opposed the prior motion. Given this failure, the court cannot conclude that Green Tree has been given reasonable notice and opportunity to be heard, as required by Fed. R. Bankr. P. 9014(a).

The court will continue the hearing to August 20, 2013, at 10:00 a.m. The moving party shall file a notice of continued hearing and serve it, together with the motion, supporting declaration, and exhibit, on the attorneys who opposed the prior motion no later than August 6, 2013, and shall file a proof of service no later than August 8, 2013. The notice of continued hearing shall be a notice pursuant to LBR 9014-1(f)(2) (no written opposition required). The hearing will be continued by minute order. No appearance is necessary on August 6, 2013.

73. 13-26599-D-13 — CHRISTOPHER/SONJA IORIO — OBJECTION TO CONFIRMATION OF PLAN BY SAN JOAQUIN POWER EMPLOYEES CREDIT UNION 7-19-13 [29]

Final ruling:

This case was dismissed on July 25, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.