UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	08-32400-D-13 JDP-1	DARRIN/FRANCES AUERBACH	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 8-13-13 [76]

Final ruling:

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

2. 08-32400-D-13 JDP-2 — DARRIN/FRANCES AUERBACH — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 8-13-13 [80]

Final ruling:

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

3. 13-29402-D-13 TBK-2 — RAMSEY/AMEL MOHAMED — MOTION TO AVOID LIEN OF COLLECTRONICS, INC. 8-19-13 [20]

4. 13-29403-D-13 TBK-1 — SILHADI ALAMI — MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A. 8-13-13 [19]

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.

5. 13-27613-D-13 JAD-2 — JAMES/JENNY BRADLEY — MOTION TO CONFIRM PLAN 8-9-13 [35]

Final ruling:

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

6. 13-28714-D-13 JOHN/CONNIE PERRY — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA
TCB-1 — 7-29-13 [15]

Final ruling:

This is the debtors' motion to value collateral of Bank of America (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, a Managing or General Agent, or Agent for Service of Process" whereas the rule requires service to the attention of an officer and only an officer.

This distinction is important. Rule 7004(b)(3), which governs service on a corporation, partnership, or unincorporated association, provides that service must be addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process . . . ." If service addressed to an "Officer, a Managing or General Agent, or Agent for Service of Process" were also sufficient for service on an FDIC-insured institution, Rule 7004(h) would be superfluous. To be sure, the preamble to Rule 7004(b) begins with the following: "Except as provided in subdivision (h) . . . ."

As an aside, the debtors' counsel should note that the title of the notice of hearing refers to a motion to value collateral of Wells Fargo, not Bank of America.

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

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

8. 10-46619-D-13 REGGINALL/VERA SCOTT — MOTION TO MODIFY PLAN
MLA-3 — 8-1-13 [75]

Tentative ruling:

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

The debtors' current confirmed plan calls for a plan payment of $2,240 per month for 60 months, to return a 1.04% dividend to general unsecured creditors. The debtors explain in their supporting declaration that due to a loan modification with Saxon Mortgage, the mortgage loan on their residence is now current, and thus, eligible to be paid directly by the debtors. The modified plan would reduce the debtors' plan payment to $509 per month, but would increase the dividend to unsecured creditors to 8%. It appears the dividend is higher despite the reduced plan payment, because of the mortgage loan modification, which incorporated the remaining balance of pre-petition arrearages into the principal balance. Thus, the payments that would have gone toward those arrearages during the remaining two years of the plan will instead be available for general unsecured creditors.

The trustee objects to the plan on three grounds: (1) the Additional Provisions are unclear as to the plan payments due for the months of April, May, and June 2013; (2) the plan is based on a mortgage loan modification, whereas the debtors have not filed a motion to incur debt to allow for the loan modification to be approved; and (3) the debtors have failed to explain the increases in several of their household expenses, increases that result in fewer funds being available for unsecured creditors. The trustee is correct on all three points, and thus, the motion will be denied. As to the trustee's first point, the debtors have failed to meet their burden of demonstrating that the plan is feasible; as to the trustee's second and third points, the debtors have failed to meet their burden of demonstrating that the plan has been proposed in good faith.

The court would add that the debtors' amended Schedule I shows a drop in their rental income from $1,250 to $500 per month, which the debtors have failed to explain. The debtors surrendered one of their rental properties by way of their original confirmed plan. However, they still have two rental properties – the single-family residence on Anita Street and the other unit of the duplex on East Washington where the debtors reside. According to the debtors' Schedule A, the Anita Street property has four bedrooms, and the Washington Avenue duplex has six bedrooms, of which, presumably, at least two are in the unit not occupied by the debtors. It does not appear reasonable that the two rentals generate only $500 per month combined. Further, at that amount of rental income, even if the entire $500 is rent on the Anita Street property, it does not appear reasonable that the debtors would continue to make the mortgage payment on that property, $746 per month, as they propose to do. If the entire $500 is in fact rent on the Anita Street property, the debtors will need to explain why they are foregoing rent on the unit of the duplex that they do not occupy.

The court will hear the matter.

9.	13-27621-D-13 RDG-2	CLAUDIA JOB	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 8-9-13 [33]

Final ruling:

This is the trustee's objection to the debtor's claim of exemption, based on her failure to file a spousal waiver. On September 3, 2013, the debtor filed a spousal waiver in the proper form, that is signed by both the debtor and her non-filing spouse. As a result of the filing of the spousal waiver, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

10.	13-28723-D-13 RCO-1	DENNIS/DONNA FREY	OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR BANK OF AMERICA, N.A. 8-5-13 [15]

11.	13-28723-D-13 RDG-1	DENNIS/DONNA FREY	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-22-13 [19]

12.	13-26925-D-13 DVD-1	JOSE CHAVEZ AND ESTHER FRANCO DE CHAVEZ	MOTION TO VALUE COLLATERAL OF CHASE 8-14-13 [70]

Final ruling:

This is the debtors' motion to value collateral of an entity identified only as "Chase." The motion will be denied for the following reasons: (1) the moving parties utilized a docket control number, DVD-1, that they have previously used for another motion in this case, contrary to LBR 9014-1(c)(3); (2) the proof of service bears a signature date of September 14, 2013, and states that service was made the same day, whereas the proof of service was filed, with a signature, a month earlier; and (3) the moving parties failed to serve Chase in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Chase by certified mail to the attention of "An officer of the Institution"

at a post office box address. However, Chase is presumably JPMorgan Chase Bank (the "Bank"), an FDIC-insured institution, and the moving parties failed to serve the Bank through either of the two law firms that have filed requests for special notice in this case on behalf of the Bank. (See DNs 24 and 60.) Pursuant to subd. (1) of Fed. R. Bankr. P. 7004(h), if an FDIC-insured institution has appeared in an action by its attorney, the moving party shall serve the attorney by first-class mail.

One of the requests for special notice states that it is not to be construed as a grant of authority from the Bank for counsel to accept service on behalf of the Bank. However, the request expressly requests that all notices and papers served in the case be served on the attorneys; that should be taken to include motions to value collateral. Further, the other request for special notice is not so limited, and clearly, both law firms requesting special notice on behalf of the Bank should have been served.

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

13.	13-26925-D-13 DVD-2	JOSE CHAVEZ AND ESTHER FRANCO DE CHAVEZ	MOTION TO VALUE COLLATERAL OF CHASE 8-14-13 [74]

Final ruling:

This is the debtors' motion to value collateral of an entity identified only as "Chase." The motion will be denied for the following reasons: (1) the moving parties utilized a docket control number, DVD-2, that they have previously used for another motion in this case, contrary to LBR 9014-1(c)(3); and (2) the moving parties failed to serve Chase in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Chase by certified mail to the attention of "An officer of the Institution" at a post office box address. However, Chase is presumably JPMorgan Chase Bank (the "Bank"), an FDIC-insured institution, and the moving parties failed to serve the Bank through either of the two law firms that have filed requests for special notice in this case on behalf of the Bank. (See DNs 24 and 60.) Pursuant to subd. (1) of Fed. R. Bankr. P. 7004(h), if an FDIC-insured institution has appeared in an action by its attorney, the moving party shall serve the attorney by first-class mail.

One of the requests for special notice states that it is not to be construed as a grant of authority from the Bank for counsel to accept service on behalf of the Bank. However, the request expressly requests that all notices and papers served in the case be served on the attorneys; that should be taken to include motions to value collateral. Further, the other request for special notice is not so limited, and clearly, both law firms requesting special notice on behalf of the Bank should have been served.

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

14.	13-26925-D-13 DVD-3	JOSE CHAVEZ AND ESTHER FRANCO DE CHAVEZ	MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB 8-13-13 [65]

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 debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

15.	10-34926-D-13 DN-2	JIMMIE/NANETTE WATTS	OBJECTION TO CLAIM OF AMERICAN GENERAL FINANCE, CLAIM NUMBER 25 8-1-13 [49]

Final ruling:

This is debtors' objection to the claim of American General Finance (the "claimant"), in the amount of $6,727.89. The debtors do not object to the amount of the claim, but only to its secured status. The objection will be overruled without prejudice because it is not supported by evidence establishing its factual allegations and demonstrating that the moving parties are entitled to the relief requested, as required by LBR 3007-1(a) and 9014-1(d)(6) (the latter made applicable to this claim objection by LBR 9014-1(a)). The moving parties object to the claim as a secured claim on the basis that "there is no proof of security agreement attached to said claim . . . ." Objection to Allowance of Claim, filed August 1, 2013, at 1:20-21.

This represents a misunderstanding of the claims process. The Ninth Circuit Bankruptcy Appellate Panel has held as follows:

> **When a creditor files a proof of claim, that claim is deemed allowed under Sections 501 and 502(a). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f) – it is not prima facie evidence of the validity and amount of the claim – but that by itself is not a basis to disallow the claim. Section 502(b) sets forth the exclusive grounds for disallowance of claims . . . .**

Heath v. Am. Express Travel Related Servs. Co. (In re Heath), 331 B.R. 424, 426 (9th Cir. BAP 2005) (emphasis added). "Noncompliance with Rule 3001(c) is not one of the statutory grounds for disallowance." Id. at 435.

In this case, the claimant's proof of claim asserts that the claim is secured. In the space for a description of the collateral securing the claim, the proof of claim indicates "Floors To Go." There is no security agreement attached to the proof of claim. That means, however, only that the proof of claim is not entitled to a presumption of validity as a secured claim. The consequence of that, however,

is not disallowance of the claim as a secured claim. "If the proof of claim is not entitled to prima facie validity then it may have lesser evidentiary weight or none at all, but unless there is a factual dispute that is irrelevant." Heath, 331 B.R. at 436.

> **[E]vidence of any kind – prima facie or otherwise – is a concern only at a hearing to resolve factual disputes. See Fed. R. Evid. 401 (defining "relevant evidence" as that tending to make more or less probable "the existence of any fact that is of consequence to the determination of the action"). The debtors' claim objections raised no factual dispute requiring a hearing. If [creditor's] proofs of claim are analogized to complaints – as is commonly done – then the debtors' objections are like motions to dismiss for failure to state a claim on which relief can be granted. The debtors do not deny any of the factual allegations of the proofs of claim; rather, their objections assert that an evidentiary hearing is unnecessary because of [creditor's] noncompliance with Rule 3001(c). Thus, the question is not the evidentiary impact of noncompliance with the rule, but whether noncompliance itself renders a claim subject to disallowance. As already noted, it does not.**

Id. at 435-36 (citation omitted).

The Heath case dealt with a debtor's objection to a proof of claim on the sole basis that the claimant did not attach copies of the writings on which the claim was based, as required by Rule 3001(c). The moving parties here have offered no reason why Heath should not also apply here, where the challenge is that the claimant did not attach evidence of a security interest, as required by Rule 3001(d). Under the rationale of Heath, the absence of such evidence merely deprives the claim of its prima facie validity; it is not a ground for disallowing the claim. Thus, to the extent the moving parties wish to challenge the claim, they will need to present at least some admissible evidence that the claim is not secured.

As a result of this evidentiary defect, the objection will be overruled without prejudice by minute order. No appearance is necessary.

16. 13-27529-D-13 PERPETUO/DEANNA BUYCO — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
RDG-1 — 7-19-13 [20]

Final ruling:

Objection withdrawn by moving party on September 6, 2013. Matter removed from calendar.

17. 10-53230-D-13 DN-3 — DAVID/LORRAINE GOMES — OBJECTION TO CLAIM OF OPERATING ENGINEERS LOCAL #3 F.C.U., CLAIM NUMBER 3 8-2-13 [33]

Final ruling:

This is the debtors' objection to the claim of Operating Engineers Local #3 F.C.U., Claim No. 3 on the court's claims register. For the following reason, the court is not prepared to sustain the objection at this time, but will continue the hearing to allow the debtors to supplement the record.

The proof of claim asserts that the claim is secured by a 2005 Mazda M3. The debtors contend the claim is not so secured, at least not as to them, and that it should be allowed as a general unsecured claim only. The objection is supported by the declaration of debtor Lorraine Gomes, who purports to testify that her husband, debtor David Gomes, co-signed the loan for someone named Jorge Terraza so he could purchase the vehicle, adding that "Jorge Terraza has always had ownership of, and possession of, the vehicle." Declaration of Lorraine Gomes, filed August 2, 2013, at 1:21. By contrast, the loan documents attached to the proof of claim name David Gomes as the "primary customer," with "David G. Gomes or Jorge J. Terrazas" as "owner(s)" (under the heading "Title-Electronic"), and they include an account statement addressed to David Gomes, not Jorge Terraza.

Given this apparently conflicting information, the court finds that Lorraine Gomes has not sufficiently demonstrated that she has personal knowledge of the matters on which she purports to testify, and that even if she does have such knowledge, her testimony is not sufficient to allow the court to conclude that David Gomes is not and has never been on title to the vehicle with Mr. Terreza. It appears debtor David Gomes would be in a better position to testify to the facts based on personal knowledge, but the court will leave it to the debtors to submit appropriate evidence.

The court will continue the hearing to October 1, 2013, at 10:00 a.m., the moving parties to file supplemental evidence no later than September 24, 2013. The hearing will be continued by minute order. No appearance is necessary on September 17, 2013.

18. 10-53230-D-13 DN-4 — DAVID/LORRAINE GOMES — OBJECTION TO CLAIM OF WELLS FARGO BANK, CLAIM NUMBER 1 8-2-13 [38]

Final ruling:

This is debtors' objection to the claim of Wells Fargo Financial National Bank (the "claimant"), in the amount of $3,161.02. The debtors do not object to the amount of the claim, but only to its secured status. The objection will be overruled for two reasons. First, the objection, notice of hearing, request for judicial notice, and exhibits all refer to the claimant as Wells Fargo Bank, whereas the claimant is actually Wells Fargo Financial National Bank. According to the FDIC's website, Wells Fargo Bank, N.A. and Wells Fargo Financial National Bank are two different banks. Given that the moving papers refer only to Wells Fargo Bank,

they were not sufficient to notify the claimant that its claim is the target of the objection.

The objection will be overruled for the additional independent reason that it is not supported by evidence establishing its factual allegations and demonstrating that the moving parties are entitled to the relief requested, as required by LBR 3007-1(a) and 9014-1(d)(6) (the latter made applicable to this claim objection by LBR 9014-1(a)). The moving parties object to the claim as a secured claim on the basis that "there is no description of the collateral and there is no proof of valid security agreement attached to the claim . . . ." Objection to Allowance of Claim, filed August 2, 2013, at 1:20-21.

This represents a misunderstanding of the claims process. The Ninth Circuit Bankruptcy Appellate Panel has held as follows:

> When a creditor files a proof of claim, that claim is deemed allowed under Sections 501 and 502(a). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f) – it is not prima facie evidence of the validity and amount of the claim – but that by itself is not a basis to disallow the claim. Section 502(b) sets forth the exclusive grounds for disallowance of claims . . . .

Heath v. Am. Express Travel Related Servs. Co. (In re Heath), 331 B.R. 424, 426 (9th Cir. BAP 2005) (emphasis added). "Noncompliance with Rule 3001(c) is not one of the statutory grounds for disallowance." Id. at 435.

In this case, the claimant's proof of claim asserts that the claim is secured, and contrary to the debtors' assertion, it does describe the collateral: as "items purchased from Jewelry Vault." (The court notes that the debtors listed the claimant on their Schedule F, but they failed to disclose the consideration for the claim, as called for by the official form.) There is no security agreement attached to the proof of claim. That means, however, only that the proof of claim is not entitled to a presumption of validity as a secured claim. The consequence of that, however, is not disallowance of the claim as a secured claim. "If the proof of claim is not entitled to prima facie validity then it may have lesser evidentiary weight or none at all, but unless there is a factual dispute that is irrelevant." Heath, 331 B.R. at 436.

> [E]vidence of any kind – prima facie or otherwise – is a concern only at a hearing to resolve factual disputes. See Fed. R. Evid. 401 (defining "relevant evidence" as that tending to make more or less probable "the existence of any fact that is of consequence to the determination of the action"). The debtors' claim objections raised no factual dispute requiring a hearing. If [creditor's] proofs of claim are analogized to complaints – as is commonly done – then the debtors' objections are like motions to dismiss for failure to state a claim on which relief can be granted. The debtors do not deny any of the factual allegations of the proofs of claim; rather, their objections assert that an evidentiary hearing is unnecessary because of [creditor's] noncompliance with Rule 3001(c). Thus, the question is not the evidentiary impact of noncompliance with the rule, but whether noncompliance itself renders a claim subject to disallowance. As already noted, it does not.

Id. at 435-36 (citation omitted).

The Heath case dealt with a debtor's objection to a proof of claim on the sole basis that the claimant did not attach copies of the writings on which the claim was based, as required by Rule 3001(c). The moving parties here have offered no reason why Heath should not also apply here, where the challenge is that the claimant did not attach evidence of a security interest, as required by Rule 3001(d). Under the rationale of Heath, the absence of such evidence merely deprives the claim of its prima facie validity; it is not a ground for disallowing the claim. Thus, to the extent the moving parties wish to challenge the claim, they will need to present at least some admissible evidence that the claim is not secured.

As a result of these notice and evidentiary defects, the objection will be overruled without prejudice by minute order. No appearance is necessary.

19. 10-53230-D-13 DAVID/LORRAINE GOMES
DN-5

MOTION TO AVOID LIEN OF OPERATING ENGINEERS LOCAL #3 FEDERAL CREDIT UNION
8-20-13 [44]

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 debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

20. 10-24731-D-13 DESIREE MINGOA
TJS-1
JPMORGAN CHASE BANK, N.A.
VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
6-10-13 [25]

21. 09-36332-D-13 LAWRENCE/PAMELA BORGES
JDP-1

MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A.
8-8-13 [73]

Final ruling:

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

22. 11-48232-D-13 SANDRA RUTLEDGE — OBJECTION TO CLAIM OF SHABBIR A. KHAN, SAN JOAQUIN COUNTY TAX COLLECTOR, CLAIM NUMBER 5
DN-2 — 8-2-13 [33]

Final ruling:

This is the debtor's objection to the claim of the San Joaquin County Tax Collector (the "Tax Collector"), Claim No. 5 on the court's claims register. On August 6, 2013, after this objection was filed, the Tax Collector withdrew the claim; as a result, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

23. 13-29133-D-13 ELAINE CAMPOS — OBJECTION TO CONFIRMATION OF PLAN BY ONEWEST BANK, FSB
EAT-1 — 8-7-13 [23]

24. 11-45739-D-13 ABRAHAM/SILVIA MAGALLANEZ — MOTION TO MODIFY PLAN
JCK-7 — 8-5-13 [71]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtors' motion to confirm a modified 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 debtors have been in this chapter 13 case for two years, during which time they have filed five sets of Schedules I and J. The most recent set preceding the ones filed with this motion were filed in February of this year, just six months before this motion. The debtors now testify that they previously underestimated their costs for electricity and gas, water, garbage, sewer, food, and clothing. The debtors first increased most of these same expenses in December of 2012, at a time when debtor Abraham Magallanez' income from his employment as an optometrist had more than doubled – from $3,340 to $7,680 per month gross. The debtors testified at that time that, as a result of that increase, debtor Silvia Magallanez, whose unemployment compensation had run out, had decided not to continue looking for work. With these changes and others, including a corresponding increase in tax withholdings and with Abraham Magallanez no longer working a second job, the debtors reported an overall increase of $900 in their income. However, rather than allowing any of that increase to accrue to their creditors' benefit, the debtors reported

increases in their expenses for utilities, home maintenance, clothing, laundry and dry cleaning, transportation, recreation, and "miscellaneous," for a combined increase of $849, wiping out any benefit to the unsecured creditors from the very significant increase in Mr. Magallanez' income. (Their plan proposed at that time would have continued the same 0% dividend as before the increase in income.)

The trustee objected to the debtors' modified plan proposed at that time, on grounds of lack of good faith, and the debtors' motion was denied. The debtors then immediately filed amended Schedules I and J on which they lowered their recently-increased expenses for home maintenance by $50, clothing by $78, and "miscellaneous" by $100. They proposed to increase their plan payment by $228; that is, to share with their creditors $228 of the $900 increase in their combined income. The trustee did not oppose the motion, and the plan was confirmed, on April 2, 2013. On August 5, 2013, just four months later, the debtors again amended their Schedules I and J, at a time when Abraham Magallanez' income had again increased, this time by $931 net. Offsetting this increase, the debtors reported a total of $820 in increased expenses; thus, they proposed to increase their plan payment by only $111.

The trustee contended the plan was not proposed in good faith in that the debtors had increased their expenses by amounts sufficient to offset a significant majority of the very sizeable increases in Mr. Magallanez' income since the case was filed. As the trustee pointed out, Mr. Magallanez' net income has increased by $3,259 per month since the case was commenced. Counting the loss of Mrs. Magallanez' unemployment benefits of $1,430 per month, the debtors have enjoyed increases in their combined income totaling $1,829 per month, which enabled Mrs. Magallanez to decide not to continue looking for work after her unemployment ran out. As against the increased income, the debtors have increased their expenses – in less than two years – by a combined total of $1,415 per month; thus, their proposed new plan payment would be just $414 higher than their original plan payment.

As the trustee pointed out, the debtors have provided lengthy explanations of the increases in their expenses, and the trustee apparently did not find their expenses extravagant. Nevertheless, he concluded: "While the trustee believes these expenses may be reasonable in ordinary circumstances, in evaluating the debtors' good faith it does not appear that the significant increase in Mr. Magallanez's income has resulted in a meaningful sharing of the benefit with unsecured creditors." Trustee's Opposition, filed August 26, 2013, at 1:26-2:1. The court agrees, concluding that while the debtors' current expense levels may be reasonable, they do not appear to be reasonably necessary. For the first five months of the case, the debtors were able to make plan payments of almost $2,000 per month. Since that time, their combined income has increased by over $1,800 per month, yet they initially claimed – in the present motion – to be able to share only $414 of that increase with their creditors. Given these circumstances, the court is not convinced the debtors are not simply choosing to spend more because they have more, and it is not convinced the debtors' budget was so thin at the beginning of the case as to be unreasonable.

In response to the trustee's opposition, the debtors have filed a reply stating that they would increase their plan payment to $2,510 per month beginning in September 2013, which would enable them to leave the dividend at 6%, the same as under the plan confirmed on April 2, 2013. However, that plan was confirmed based on schedules that did not include the latest $931 increase in Mr. Magallanez' net income. Thus, the proposal the debtors would now agree to would have them sharing

just $242 of that $931 net increase with their creditors. In other words, the debtors' reply is nothing more than the continuation of a pattern that allows the debtors to enjoy significant increases in their combined net income, while sharing just 25% of each increase (or less) with their creditors. To conclude, the debtors have failed to persuade the court they are not simply spending more because they have more. The court is not convinced the debtors' latest increases in their expenses represent reasonably necessary increases.

Under the circumstances, 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 by minute order. No appearance is necessary.

25.	09-41345-D-13 PGM-3	MICHAEL/ANGELA ENGLE	MOTION TO APPROVE LOAN MODIFICATION 8-15-13 [46]
26.	13-25945-D-13 BSH-3	JEFFREY VAN RYN	MOTION TO CONFIRM PLAN 7-31-13 [39]
27.	08-29547-D-13 CLH-2	PATRICK SAMSON	CONTINUED OBJECTION TO CLAIM OF CENTRAL MORTGAGE COMPANY, CLAIM NUMBER 2 3-5-13 [39]

28. 08-37047-D-13 JENNIFER WHITE — NOTICE OF DEFAULT AND INTENT TO DISMISS CASE
7-7-13 [74]

29. 08-37047-D-13 JENNIFER WHITE — MOTION TO VALUE COLLATERAL OF
RAW-1 — U.S. BANK, N.A.
8-20-13 [78]

30. 13-24047-D-13 EDMUNDO/MARIA MOLINA — MOTION TO CONFIRM PLAN
MDL-6 — 8-1-13 [74]

Tentative ruling:

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 debtors' original plan, filed March 26, 2013, called for plan payments of $92.56 per month for 60 months, with a 1% dividend – a total of $2,112 – being paid on $211,244 in general unsecured claims. On June 26, 2013, the debtors sought approval of a mortgage loan modification that would save them $1,711 per month on their mortgage payment. The trustee opposed that motion and the court denied it, on the ground that the debtors had failed to propose an increase in their plan payment or the dividend to unsecured creditors. The debtors' most recent Schedules I and J, filed May 13, 2013, showed they would not need any portion of the mortgage savings for their living expenses, but were simply proposing to retain the savings, $1,711 each month – almost as much as the total they intended to pay their unsecured creditors in 60 months – for themselves.

After that motion was denied, the debtors filed a further amended Schedule J on which they have increased their expenses to offset the mortgage savings almost to the penny. (Without the mortgage savings, their May 13, 2013 schedules showed monthly net income of $92.56; with the savings, the new amended schedules show monthly net income of $96.27.) Thus, their amended plan proposes plan payments of $96.27 per month for 60 months, with the same 1% dividend as before. The debtors

have accomplished this in two ways. First, they have increased their medical expenses from $200 to $800 per month, explaining that debtor Edmundo Molina is a double lung transplant survivor who needs above-average amounts of medical care. The debtors have not disclosed when he had the transplant or why they were not, from prior experience, able to accurately estimate their medical bills when they filed not one but two Schedules J with the $200 figure – on March 26, 2013 and May 13, 2013.

The debtors claim to have filed as exhibits copies of their medical bills for the post-petition period (from March 26, 2013); however, the invoices are incomplete – the debtors included only the first pages of each, and the court cannot determine either (1) whether the amounts billed are separate amounts or account balances carried forward from one date to another, or (2) which of the bills the debtors actually paid. The invoices include one that lists an account balance of $8,473, of which $7,767 were "charges pending with insurance," and another with an account balance of $11,282, of which $9,688 was satisfied by insurance payments and insurance adjustments. The debtors have not indicated whether charges of this size are regularly recurring or exceptional. Without this information, and especially given that the debtors signed under oath two Schedules J utilizing the $200 figure – schedules the court and the parties should have been able to rely on – the court is unable to determine that the debtors have met their burden of demonstrating that the plan is proposed in good faith.

Second, the debtors have added to their Schedule J a $1,107 mortgage payment on their rental property that they included on their original Schedule J but removed on the earlier amended one. They claim the mortgage payment was omitted from the first amended schedule in error, but in reality, given the reduction in debtor Maria Molina's income (see DN 37), they could not have afforded any portion of the mortgage payment on the rental without the modification of their home mortgage loan. The trustee contends that, so long as the debtors are diverting this $1,107 from unsecured creditors in favor of the mortgage payment on the rental property, the plan fails the disposable income test and is not proposed in good faith.

The trustee finds the mortgage payment unreasonable because the debtors are receiving no rental income from the property. According to the debtors, the property has not been rented for over nine months because a prior tenant caused significant damage. (On their Statement of Financial Affairs, the debtors apparently inaccurately failed to disclose any rental income in the two years preceding their bankruptcy filing.) The debtors have responded to the trustee's opposition by citing Drummond v. Welsh (In re Welsh), 711 F.3d 1120, 1135 (9th Cir. March 25, 2013). The court agrees with the debtors – under that decision, this court may not consider the debtors' mortgage payment on the rental property in considering either the disposable income test or the good faith test.

Finally, the trustee opposes the motion on the ground that the debtors are supporting an adult daughter and a minor granddaughter (ages 22 and 3) although they have no legal obligation to do so, while their daughter contributes no funds to the household. The debtors are significantly above-median income debtors, even for a family of four. Congress saw fit to permit above-median income debtors to continue to pay expenses reasonable and necessary for the care and support of an elderly, chronically ill, or disabled household or family member "who is unable to pay for such reasonable and necessary expenses" himself or herself. See § 707(b)(2)(A)(ii)(II) (incorporated into the disposable income test for above-median income debtors by § 1325(b)(3)). The debtors have not responded to the trustee's argument, and in particular, they have not shown that their daughter and

granddaughter fall within that definition, or that neither their daughter nor the child's father is unable to provide for the debtors' grandchild, such that the debtors should be permitted to support them at the expense of their creditors. In these circumstances, the court is unable to conclude that the debtors have met their burden of demonstrating that the plan has been proposed in good faith.

The court will hear the matter.

31.	13-24047-D-13 MDL-7	EDMUNDO/MARIA MOLINA	MOTION TO APPROVE LOAN MODIFICATION 8-22-13 [84]

32.	09-46148-D-13 JCK-1	PETER REA	MOTION TO MODIFY PLAN 8-2-13 [23]

33.	12-36750-D-13 JAD-3	CHARLES/JULIANNE RUIZ	MOTION TO MODIFY PLAN 7-31-13 [71]

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.

34.	13-20151-D-13 WW-2	FLORENTINO/FLORDELIZA GUERZO	MOTION TO CONFIRM PLAN 7-29-13 [67]
35.	13-29154-D-13 RDG-1	ROSA VERDIN	CONTINUED MOTION TO DISMISS CASE FOR UNREASONABLE DELAY THAT IS PREJUDICIAL TO CREDITORS AND/OR MOTION TO DISMISS CASE 8-6-13 [20]
36.	13-30959-D-13 ACW-1	STEVEN/DIANE GALLEGOS	MOTION TO EXTEND AUTOMATIC STAY 8-22-13 [8]
37.	13-26962-D-13 SBS-3	SALVADOR MOYA AND ROSALBA HUERTA	MOTION TO VALUE COLLATERAL OF GREEN TREE SERVICING, LLC 8-19-13 [61]

Final ruling:

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

38. 09-44264-D-13 DN-1 — RICK/YOLANDA SANCHEZ — OBJECTION TO CLAIM OF BAC HOME LOANS SERVICING, LP
8-1-13 [38]

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 the court will disallow the arrearage portion of the claim in the amount of $10,255.40. Moving party is to submit an appropriate order. No appearance is necessary.

39. 12-30364-D-13 DN-2 — LEONCIO VIVIT — MOTION TO MODIFY PLAN
8-1-13 [37]

Final ruling:

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

40. 13-28264-D-13 DVD-2 — NOE/ROSE TREJO — MOTION TO AVOID LIEN OF DISCOVER BANK
8-7-13 [22]

Tentative ruling:

This is the debtors' motion to avoid an alleged judicial lien held by Discover Bank (the "Bank"). No party-in-interest has filed opposition. However, that does not necessarily entitle the moving parties to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Having examined the merits of the motion, the court will deny it.

"There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added).

Since there must be a judicial lien for the court to avoid under § 522(f)(1)(A), the moving parties must demonstrate that one actually exists. Here, the Bank's abstract of judgment was recorded on July 8, 2013, two and one-half weeks after the debtors filed their petition commencing this case. The Bank did not obtain relief from the automatic stay to record the abstract; thus, it appears the abstract was recorded in violation of the stay, and the recordation is therefore void (Schwartz v. United States (In re Schwartz), 954 F.2d 569, 571 (9th Cir. 1992)) and of no effect. Id. at 572. If that is the case, the recordation of the abstract of judgment did not have the effect of creating a lien in favor of the Bank, and there is no judicial lien for the court to avoid.

The court will hear the matter.

41. 10-32965-D-13 TBK-1 — RODOLFO/HERMINIA PALACIO — MOTION TO MODIFY PLAN 8-9-13 [55]

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.

42. 12-42068-D-13 JCK-3 — DOMINIQUE BROWN — OBJECTION TO CLAIM OF MORADA RANCH OWNERS ASSOCIATION, CLAIM NUMBER 13 8-2-13 [53]

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 issue a minute order sustaining the debtor's objection to claim. No appearance is necessary.

43. 12-42068-D-13 JCK-5 — DOMINIQUE BROWN — MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC 8-15-13 [59]

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.

44. 12-20069-D-13 FF-3 | RONALD/KIMBERLY TANKERSLEY | MOTION TO MODIFY PLAN 7-22-13 [54]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. The court notes that on September 11, 2013, the debtors filed a notice of withdrawal of this motion. However, after the opposing party has filed opposition, as the trustee has done here, the moving party may not withdraw the motion without a court order. Fed. R. Civ. P. 41(a)(1)(A) and (2), incorporated in this contested matter by Fed. R. Bankr. P. 9014(c) and 7041. The court finds that withdrawal of the motion is not appropriate, and will deny the motion instead. This is the debtors' motion to confirm a modified chapter 13 plan. The trustee has filed opposition. For the following reasons, the motion will be denied.

The debtors' present confirmed plan calls for plan payments of $1,766 per month for 60 months, with a 0% dividend to general unsecured creditors. In May of this year, the debtors filed a motion for approval of a mortgage loan modification. The trustee opposed the motion on the ground that the modification would save the debtors $544 per month on their mortgage payment,1 whereas they had failed to propose a modified plan to share any of those savings with their creditors. The debtors responded that they were "taking the changes in the overall dynamics of the Chapter 13 Plan step-by-step" (Reply to Trustee's Opposition, filed June 20, 2013, at 2:4-5), and that they would file a motion to modify their plan within 20 days of the order approving the loan modification. The loan modification was approved; this motion followed. Under the modified plan, the debtors propose not to increase their plan payment but to reduce it – from $1,766 to $209 per month. Part of the difference is that the debtors will no longer be paying their mortgage payment through the plan; the rest is explained as follows.

The debtors filed amended Schedules I and J with this motion, on which they show their monthly income as $1,650 lower than before. They have eliminated a $600 per month day care expense and reduced other living expenses by $288. They will be paying the new mortgage payment, $795, directly to the lender. Thus, they propose to reduce the plan payment from $1,766 to $2092 per month, despite the fact that they are saving at least $467 per month on their mortgage payment. Because the pre-petition mortgage arrears have been rolled into the loan balance and are no longer being paid through the plan, the debtors' plan payment will result in a very small increase in the dividend to unsecured creditors – from 0% to 2.4%.

The trustee contends the plan is not proposed in good faith because the debtors have begun deducting from debtor Ronald Tankersley's wages $416 per month for deferred compensation, a deduction they were not taking at the beginning of the case. It appears the debtors began this deduction solely to offset some of the savings from their loan modification, so as to keep their plan payment as low as possible. The trustee notes also that the debtors have failed to explain the apparent loss of $588 per month in death benefits they were receiving for their niece and nephew who reside in their household.

The debtors are above-median income debtors, even for a family of seven. Congress saw fit to permit above-median income debtors to continue to pay expenses reasonable and necessary for the care and support of an elderly, chronically ill, or disabled household or family member "who is unable to pay for such reasonable and

necessary expenses" himself or herself. See § 707(b)(2)(A)(ii)(II) (incorporated into the disposable income analysis for above-median income debtors by § 1325(b)(3)). According to their original and amended Schedules I, the debtors are supporting a niece, two nephews, and an adult stepson; according to their declaration filed with this motion, their adult daughter and the father of one of the debtors are now living with the debtors as well. The debtors have not shown that any of these individuals falls within the § 707(b)(2)(A)(ii)(II) definition, such that the debtors should be permitted to support them at the expense of their creditors.3 In these circumstances, and given the debtors' decision to begin contributing to a deferred compensation plan an amount equal to 76% of the amount of their mortgage savings, coupled with their failure to explain the loss of their niece's and nephew's death benefits, the court is unable to conclude that the debtors have met their burden of demonstrating that the plan has been proposed in good faith.

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.

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1 The court is unsure how this figure was derived – the mortgage payment was $1,262 and is now $795, for a savings of $467.

2 $1,766 - $1,650 + $600 + 288 - $795 = $209.

3 The debtors state that their father is in the beginning stages of dementia; they do not indicate that he is financially unable to provide for his own expenses. They state that their adult daughter "has suffered her own financial problems"; they do not indicate she is chronically ill or disabled and, as such, unable to provide for herself. They show no contributions from either their father or their daughter (or their adult stepson) on their amended Schedule I.

45.	12-42070-D-13 JCK-3	MATIAS/CHRISTINA URRUTIA	OBJECTION TO CLAIM OF TD BANK USA, N.A., CLAIM NUMBER 27 8-2-13 [52]

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 issue a minute order sustaining the debtors' objection to claim. No appearance is necessary.

46.	12-42070-D-13 JCK-4	MATIAS/CHRISTINA URRUTIA	OBJECTION TO CLAIM OF TD BANK USA, N.A., CLAIM NUMBER 28 8-2-13 [48]

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 issue a minute order sustaining the debtors' objection to claim. No appearance is necessary.

47. 11-40471-D-13 IRS-1 — JIMMY/MELODY MURRAY — MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE 3 TO CHAPTER 7
8-2-13 [69]

48. 10-36572-D-13 JDP-1 — GEORGE PUDDY — MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A.
8-12-13 [41]

Final ruling:

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

49. 10-26574-D-13 DN-1 — DOYLE/TERESA MEREDITH — MOTION TO MODIFY PLAN
8-1-13 [26]

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.

50. 13-27075-D-13 DEF-5 — VICTOR/RENEE PADILLA — MOTION TO VALUE COLLATERAL OF WELLS FARGO HOME MORTGAGE, INC.
8-14-13 [46]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Wells Fargo Home Mortgage, Inc. at $125,000, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a deed of trust on real property that is not the debtors' residence. No timely opposition has been filed and the valuation requested in the motion is supported by the record. As such the court will grant the motion and set the amount of Wells Fargo Home Mortgage, Inc.'s secured claim at $125,000. The moving party is to submit an order which sets the creditor's secured claim at $125,000 for the purpose of plan confirmation. No further relief will be afforded. No appearance is necessary.

51. 13-30380-D-13 MICHAEL HANNA
DN-1

MOTION TO VALUE COLLATERAL OF WELLS FARGO SERVICING CENTER
8-20-13 [9]

52. 13-26982-D-13 GERARDO ZUNIGA
13-2228 PD-1
ZUNIGA V. WELLS FARGO BANK, N.A. ET AL

MOTION TO DISMISS ADVERSARY PROCEEDING
8-14-13 [12]

Final ruling:

This adversary proceeding was dismissed by minute order on September 12, 2013. As such, the motion is denied as moot by minute order. No appearance is necessary.

53. 11-23183-D-13 HUSTON/SHIRLEY BAKER
DN-3

OBJECTION TO CLAIM OF CITIMORTGAGE, INC.
8-1-13 [44]

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 issue a minute order sustaining the debtors' objection to claim. No appearance is necessary.

54. 13-29884-D-13 SCOTT/MONICA NUCKELS
ALB-1

MOTION TO VALUE COLLATERAL OF UNION BANK
8-13-13 [12]

Final ruling:

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

55. 12-34189-D-13 SUSAN KRALJ — MOTION TO MODIFY PLAN
EJS-1 — 8-1-13 [74]

Tentative ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The trustee has filed opposition, and the debtor has filed a reply and supplemental declaration. For the following reasons, the motion will be denied.

The debtor's present confirmed plan calls for plan payments of $400 per month for 3 months and $1,300 per month for 57 months, with a 30% dividend to general unsecured creditors. By way of the modified plan, the debtor would reduce her plan payment to $600 per month and the dividend to 11%. According to the motion and supporting declaration, the sole reason for the motion is that the debtor has obtained new counsel and, in reviewing her budget, determined that certain expenses were listed incorrectly or even omitted from her original Schedule J, filed over a year ago. The debtor's reply to the trustee's opposition states that there were "glaring deficiencies" in the original schedules, including no money budgeted for recreation, property taxes and insurance, car insurance, or life insurance. The debtor does not explain why she, apparently, did not carefully review the schedule before she signed it or why she did not carefully review the amended Schedule J she signed three months into the case.

In addition, the motion and declaration (and reply and supplemental declaration) do not mention that the debtor's employment income has increased – by $1,253 per month. The court questions whether the debtor's review of her expense schedule was triggered by a perceived need to offset some of that increased income. In all, she has increased her living expenses by almost $500 per month. In addition, her amended Schedule I shows a new deduction of $416 per month for a contribution to a deferred compensation plan which, like the increased expenses, offsets a portion of the debtor's increased income. The trustee has objected to this contribution as not reasonable or necessary in any amount, but especially in light of the reduction in the dividend to unsecured creditors. The debtor responds that the trustee is confusing the contribution to a deferred compensation plan with the debtor's former contribution to a voluntary retirement plan. (The response states that the debtor has stopped making a $300 per month contribution to a voluntary retirement plan.)

According to the debtor, the $416 contribution permits the debtor, as a teacher, to receive a paycheck throughout the year. Bearing in mind that the debtor ultimately has the burden of proof as to the requirements for confirmation, the court will, at least initially, defer to the trustee to verify this statement and to verify that this is money the debtor receives back in the form of wages, presumably during the summer months, which are reflected on the debtor's amended Schedule I. The court wonders, however, why the debtor was not making this contribution at the outset of the case if she found it necessary to equalize her income throughout the year. But in any event, the debtor's explanation raises an additional question. The debtor states in her supplemental declaration that "[t]he only retirement that is taken out [of her paycheck], which is for STRS, is involuntary." Debtor's Supplemental Declaration, filed Sept. 10, 2013, at 2:14-15. By contrast, there are two apparent retirement deductions listed on the debtor's amended Schedule I – for STRS, $689 per month, and for CLPRS, $374 per month. If the latter is not for the same purpose as the $300 retirement contribution listed on the original schedule,

which the debtor now says she has stopped, she will need to explain what it is.

Finally, the debtor stated in her original declaration supporting the motion that she has incurred post-petition expenses, including vehicle repairs and home maintenance expenses, that she has now included on an updated Schedule J. The trustee believes the debtor's creditors should not have to bear the entire burden of her post-petition debt to her car mechanic, especially when she has increased her recreation expense and continues to spend $340 per month for feed for her two 25-year old horses. The trustee does not believe the debtor should give up the horses. He does, however, believe this plan, which reduces the dividend to unsecured creditors from 30% to 11%, and the plan payment by more than half, has not been proposed in good faith.

The debtor responds that her recreation budget before was $0, which was unrealistic, and that the trustee should not object to the money spent on the horses because he did not object to the same amount for that expense on the debtor's original budget. What this position does not take into account is that the analysis of a debtor's good faith in proposing a plan, and of an appropriate balance between a debtor's interests and those of her creditors, will differ from time to time depending on the totality of the circumstances. Here, the debtor has enjoyed a $1,253 increase in her income, some of which is going toward increased tax withholdings and so on. But rather than proposing to share <u>any</u> of the increase with her creditors, the debtor proposes to reduce her plan payment by $700 per month, with a corresponding decrease in the dividend – from 30% to 11%. In this situation, the court agrees with the trustee. In fact, it appears that even with the increased expenses, most of which the debtor contends pertained from the beginning but were mistakenly not included in her schedules, and while contributing $300 per month to a voluntary retirement plan, the debtor has still been able to make plan payments averaging $872 per month, $272 per month more than she proposes to pay on a go-forward basis. (Her new plan proposes a total of $9,600 in plan payments from September 2012 through July 2013, which averages out to $872 per month.)

For the reasons stated, the court is not persuaded the debtor has met her burden of demonstrating that the plan has been proposed in good faith.

The court will hear the matter.

56.	13-30490-D-13 JDP-1	CURTIS/ROSELAND ADAMS	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 8-13-13 [8]

Final ruling:

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

57. 11-28198-D-13 JOZH/EUGENIA FAY MENDOZA MOTION TO MODIFY PLAN
JCK-8 8-9-13 [101]

Tentative ruling:

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

The trustee contends the plan has not been proposed in good faith because the debtors have been funding through their plan, at a significantly inflated rate, a car loan for a 2005 Ford F150 that is driven by debtor Jozh Mendoza's father, who has been paying the debtors only a small portion of the amount the debtors have been paying for the vehicle through their plan. From the beginning of this case until May 2013, the debtors' several Schedules I filed in the case showed income of $456 as "Car Payment from father." The debtors, by contrast, have been paying the car loan at the rate of $1,727 per month through their plan. In light of these facts, the debtors' statement that "Jozh's father was paying for his car that was being paid through the plan"1 is misleading. In fact, Mr. Mendoza's father was paying only a small part – less than 27% – of the amount the debtors were paying on the car loan through the plan. In other words, the debtors have essentially been making a gift to Mr. Mendoza's father of $1,271 per month at their creditors' expense.2

As the trustee notes, the court twice found, on the debtors' earlier motions to confirm a modified plan, that if Mr. Mendoza's father was in fact driving the vehicle, the expense of the car loan was not reasonable and necessary for the debtors. In fact, in its June 18, 2013 ruling, the court stated it was not inclined to allow any further payment to be made by the debtors on the car loan. Despite that ruling, the debtors continued to pay the car loan through the plan, although according to the debtors, Mr. Mendoza's father had by then stopped making any portion of the payment. The debtors also ignored this aspect of the court's ruling completely in their next motion to confirm a modified plan, and that motion was denied on the same basis – that the debtors proposed to continue paying on the car loan.

The debtors finally addressed the issue in the present motion, in which they advise that the car loan was paid off in August of this year through the plan. Thus, in the debtors' view, the issue was closed: "Jozh's father's truck will be paid off in August 2013 and so there is no need for him to pay us extra to cover the truck . . . ." Decl. at 4:14-15.

The trustee did not agree. He stated in his opposition:

> **[I]f the vehicle is actually that of Mr. Mendoza's father then he needs to continue to pay for the vehicle. The trustee requests that the debtors provide an accounting of all funds received from Mr. Mendoza from March 31, 2011 to the present. To the extent that these funds do not total the amount disbursed by the trustee on the Golden One claim [$19,726.75 plus interest at 5%] those amounts must be tendered by debtors in their plan for distribution to unsecured creditors in addition to the sums currently proposed to be paid by the debtors. The voluntary monies paid for tuition at a private school [by the debtors' parents for the debtors' daughter] do not satisfy this payment owed by Mr. Mendoza.**

Trustee's Opposition, filed August 30, 2013, 2:3:9.

On September 12, 2013, the debtors filed a response, as follows:

> Debtors have transferred into the plan the $ 456 a month paid by Mr. Mendoza's father for the last 28 months ($ 456 x 28 months equals $ 12,758). Since Golden One Credit Union has been paid off at $ 20,340.73 for the father's F150, the Debtors propose to have the father continue to contribute $ 230 a month for the remaining 32 months ($ 230 x 32 months equals $ 7,360). Therefore, Mr. Mendoza's father will have paid in over $ 20,000 and thus paid off the F-150 at no expense to the unsecured creditors.

Debtors' Response, filed Sept. 12, 2013, at 1:21-27. According to the debtors, they will add this extra $230 per month to their plan payment, for a total plan payment of $994, and the dividend to unsecured creditors will increase from 18.5% to 23.5%. The court will defer to the trustee to determine whether this calculation is accurate.

However, the court sees at least two problems. First, the response is not supported by any admissible evidence, and the statement that Mr. Mendoza's father has been paying $456 per month for the last 28 months is contradicted by the debtors' earlier testimony. The first 28 plan payments in this case were the payments for April 2011 through July 2013, whereas the debtors testified in a declaration filed May 3, 2013 that "Jozh's father no longer gives us the $476 [$456] toward the car payment because he believes the financing period is over." Debtors' Declaration, filed May 3, 2013, at 2:6-7. Thus, the only evidence of record is that Mr. Mendoza's father stopped paying the debtors the $456 at least as early as May of 2013, and possibly earlier.

Second, the new proposal is unsupported by evidence that Mr. Mendoza's father is willing and able to make the $230 payments or that he will be willing and able to continue with the payment for the last 32 months of the plan.

Finally, the court remains concerned with the issue of the debtors' good faith in this case. For many months, they paid on the loan for Mr. Mendoza's father's car well over twice the amount he was paying them for it (and well over twice the amount required by the contract); they then continued to pay on the loan after he had stopped paying anything; and they then disregarded the court's two prior rulings that if Mr. Mendoza's father was in fact driving the vehicle, the expense of the car loan was not reasonable and necessary for the debtors. They came up with this latest proposal, which, it appears, contains inaccurate information and continues to put unsecured creditors at risk of future negative developments, only after the trustee concluded they must have no reasonable explanation why Mr. Mendoza's father was not continuing to make the payment to the debtors.

The court will hear the matter.

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1 Debtors' Declaration, filed August 9, 2013 ("Decl."), at 3:7-8.

2 Thus, the debtors managed to pay off the car loan in August of 2013, 21 months earlier than it would have been paid off under the contract terms (April of 2015). See Retail Installment Sale Contract, page 2 of Golden 1 Credit Union's proof of claim filed May 17, 2011.

58. 13-24098-D-13 MARTHA SOLIS
MBB-1
BANK OF AMERICA, N.A. VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
5-29-13 [22]

59. 13-25998-D-13 SHANELLE RANDISI
KJL-2

MOTION TO CONFIRM PLAN
8-6-13 [37]

60. 13-29799-D-13 ARTEMIO/NILDA OLIVAR
CAH-1

MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
8-12-13 [12]

Final ruling:

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

61. 10-31821-D-13 FRANCISCO SIERRA
TOG-5

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
8-30-13 [41]

62. 13-29133-D-13 ELAINE CAMPOS
RDG-2

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-28-13 [31]

63. 13-21234-D-13 JOHN/CYNTHIA GIFFORD
RDG-1

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-28-13 [58]

Tentative ruling:

This is the trustee's objection to confirmation of the debtors' proposed chapter 13 plan. Debtor Cynthia Gifford has filed opposition. (Debtor John Gifford has died.) For the following reasons, the objection will be sustained.

The trustee objected that the plan does not meet the liquidation test. Debtor Cynthia Gifford testified at the 341 meeting that her husband – the joint debtor – had recently passed away, and that she would be receiving $250,000 in life insurance proceeds, which had not been claimed as exempt, and which would be sufficient to pay a 100% dividend to general unsecured creditors in a hypothetical chapter 7 case, whereas the debtor's plan proposes 0%. The debtor has now filed amended Schedules B and C listing and claiming as exempt $286,000 in life insurance proceeds. The time to object to the claim of exemptions has not expired; thus, the court cannot determine at this time whether the plan satisfies the liquidation test.

The trustee also objected that the plan provides for the secured claim of Safe Credit Union at less than the full amount of the claim, whereas the debtor had failed to seek an order valuing the collateral securing the claim. The debtor has now filed a motion to value that collateral, which is set for hearing on October 1, 2013. The court's local rules contemplate that the hearing on a motion to value collateral be concluded before or in conjunction with the confirmation of the plan. See LBR 3015-1(j). In this case, the debtors filed their proposed chapter 13 plan on April 11, 2013, a few days after they had filed a motion to convert the case from chapter 7 to chapter 13. The case was converted to chapter 13 on June 27, 2013. However, the debtor did not file a motion to value collateral until after this objection to confirmation was filed. Thus, the debtor did not take the necessary steps to obtain an order valuing collateral before or in conjunction with the contemplated confirmation of the plan. For that reason and because the issue of the debtor's exemption of the life insurance proceeds has not been determined, the court will sustain the trustee's objection to confirmation.

The court will hear the matter.

64.	13-29144-D-13 RDG-1	FRANCISCO ITURBIDE	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-28-13 [24]
65.	13-29144-D-13 RWR-1	FRANCISCO ITURBIDE	OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 8-28-13 [19]
66.	12-36847-D-13 TBK-3	CORDELL PENNIX AND HORTENSIA WATTS-PENNIX	MOTION TO INCUR DEBT 9-3-13 [34]
67.	13-29154-D-13 MBB-1	ROSA VERDIN	OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A. 8-28-13 [25]

68.	13-29154-D-13 RDG-2	ROSA VERDIN	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-28-13 [29]
69.	09-40480-D-13 DN-5	CHRISTIAN/LINDA BOSS	MOTION TO SELL 8-27-13 [66]