UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

October 8, 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.

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1. 13-91302-D-13 RDG-2 — ALLAN/GINGER CRUZ — OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS 8-30-13 [16]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. On September 23, 2013, the debtors filed an amended Schedule C. As a result, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

2. 13-90820-D-13 CLH-4 — ROBERT/PAMELA WILLIAMS — MOTION TO CONFIRM PLAN 8-20-13 [58]

Final ruling:

Motion withdrawn by moving party on September 30, 2013. Matter removed from calendar.

3. 13-91024-D-13 BRUCE VELTHOEN
BSH-2

CONTINUED MOTION TO VALUE COLLATERAL OF GREEN TREE SERVICING LENDING
7-24-13 [38]

Tentative ruling:

This is the debtor's motion to value collateral of Green Tree Servicing LLC ("Green Tree") – a first position deed of trust against a rental property owned by the debtor – at $85,000, leaving the balance of Green Tree's claim, $75,688, as a general unsecured claim. Green Tree filed opposition, and the hearing was continued to allow the debtor to file a reply, which the debtor has done. For the following reasons, the motion will be denied.

The debtor supported the motion with his own declaration, in which he stated: "At the time of the filing, the real property was worth approximately $85,000." Debtor's declaration filed July 24, 2013, at 2:1-2. In a motion to value a second deed of trust against the same property at $0, filed just one month earlier, the debtor had testified that at the time of filing, the property was worth approximately $70,000. Debtor's declaration filed June 25, 2013, at 2:1-2. The only explanation for this discrepancy appears in a declaration in support of a motion to confirm a plan, filed July 18, 2013, in which the debtor stated that "the value of [the property] has increased by approximately $15,000." Debtor's declaration filed July 18, 2013, at 3:14-15. The debtor has provided no explanation of why or how he came to determine that the value had increased.

In opposition to the motion, Green Tree filed a declaration of real estate appraiser Anita Stoll, who testified that in her professional opinion, the fair market value of the property is $140,000.[1] The debtor filed a reply, along with a declaration of real estate appraiser David Van Horn describing what, in his opinion, are "significant deficiencies"[2] in Ms. Stoll's appraisal.

The debtor's analysis of the state of the evidence, as set forth in his reply, is as follows.

"The debtor bears the initial burden of proof of overcoming any presumption established by the stated value in the secured creditor's proof of claim. However, the secured creditor has the ultimate burden of persuasion to demonstrate by a preponderance of the evidence the value of the collateral which secures its claim." Debtor's Reply, filed Sept. 24, 2013, at 1:24-27. As Green Tree had filed no proof of claim,[3] the debtor, by his own supporting declaration, "has met his burden of overcoming any presumption that a proof of claim states the correct valuation of the property" (id. at 2:3-4), thereby shifting the ultimate burden of persuasion to Green Tree, who, in the debtor's view, has not met its burden because of the deficiencies in Ms. Stoll's appraisal.

The debtor's analysis is incorrect. He cites In re Southmark Storage Assoc. Ltd. Partnership, 130 B.R. 9, 10 (Bankr. D. Conn. 1991), for the proposition that the creditor has the ultimate burden of persuasion as to the value of its collateral, and there is similar authority in this district. See In re Serda, 395 B.R. 450, 454 (Bankr. E.D. Cal. 2008) (citing only Southmark Storage). There is also authority to the contrary. See In re Penny, 2011 Bankr. LEXIS 244, *5 (Bankr. N.D. Cal. 2011); In re Todd, 194 B.R. 893, 895 (Bankr. D. Mont. 1996). Either way, however, the debtor's theory would require the court to accept the debtor's evidence

and disregard Green Tree's appraisal simply because another appraiser finds fault with it. That is, the debtor's theory overlooks the distinction between the admissibility of evidence and the weight it should be given. See In re Brown, 244 B.R. 603, 611-12 (Bankr. W.D. Va. 2000) (uncontradicted testimony of owner of property as to value is entitled to "such weight as [the court] determines appropriate."). "Even though [the owner's] testimony as to valuation is admissible, it should be subject to the same type of critical analysis as would the testimony of an independent 'expert.'" Id. at 612.[4]

> The court must determine how much weight to give the competing opinions of value. The Debtor's testimony is subject to the same critical analysis as that of an independent appraiser. Based on the differences between the parties' respective positions, the court must carefully scrutinize the methods by which the competing opinions were derived. When the owner of property is unable to provide a detailed explanation of how he or she arrived at a value for the property, the testimony may be insufficient to establish in the court's mind an "actual belief . . . derived from the evidence" as to the validity of the owner's opinion.

In re Meeks, 349 B.R. 19, 22 (Bankr. E.D. Cal. 2006).

Thus, the court will weigh the evidence. On the debtor's side is his testimony that the property was worth approximately $85,000 (and $70,000 one month earlier), with no explanation as to how he arrived at those figures, together with Mr. Van Horn's comments about Ms. Stoll's appraisal. On Green Tree's side is Ms. Stoll's appraisal itself, as authenticated by her declaration. The court recognizes that Mr. Van Horn has considerably more experience as an appraiser than Ms. Stoll (23 years versus 9 years). However, the court is not impressed with Mr. Van Horn's critique of Ms. Stoll's appraisal. His first point – that the appraisal gives no defined neighborhood boundaries – is simply incorrect. In the "Neighborhood" section on page 1, the appraisal gives specific streets bounding the neighborhood in all four directions. The eastern, northern, and southern boundaries chosen by Ms. Stoll are different from those chosen by Mr. Van Horn (the western boundary is the same), but the court finds no significance in this. Mr. Van Horn does not indicate that the neighborhood name used in the appraisal is wrong or that the specific characteristics or the narrative description in the addendum are incorrectly or insufficiently stated (except as to the trend in property values, as discussed below). Mr. Van Horn does not challenge Ms. Stoll's selection of comparables, all of which are within one mile of the debtor's property, on the basis of location.

Mr. Van Horn does take issue with particular figures given by Ms. Stoll for certain comparables. For example, he indicates she listed an escrow closing date of April 2013 for Comparable #1, whereas the actual closing date was June 6, 2013. The court finds this discrepancy to be inconsequential. Mr. Van Horn also complains that Ms. Stoll misstated the gross living area for Comparable #6's main house at 1,672 square feet, whereas it is actually 1,070 square feet. Mr. Van Horn does not indicate what impact the correct figure would have on the appraisal, but it appears to the court the effect would be to increase the value of the debtor's property, because it has a gross living area in the main house of only 1,128 square feet, and Ms. Stoll adjusted the price of Comparable #6 downward by $19,000 on account of its apparently incorrectly larger square footage.

Mr. Van Horn also complains of certain inconsistencies the court finds to be adequately explained in the appraisal. For example, Mr. Van Horn notes that Ms. Stoll gave no contributory value to a 280 square foot converted garage in Comparable

#3, whereas she gave one-car garages in other comparables a contributory value of $5,000. He concludes she has demonstrated "an inconsistent approach to handling adjustment for differences in amenities." Decl. at 3:12-13. However, Ms. Stoll noted that Comparable #3's one-car garage had been converted into a third bedroom, making this home similar in parking to the debtor's, which has no garage.

Mr. Van Horn finds another inconsistency in Ms. Stoll's giving minimal weight to an additional unit in the backyard, but no weight to an additional bathroom, whereas there is no permit for either. This represents, in Mr. Van Horn's view, "an inconsistent approach to handling un-permitted improvements." Decl. at 2:19-20. However, Ms. Stoll explains that the additional unit in the backyard, although without a permit, is habitable and is rented to tenants.

Next, Mr. Van Horn finds the 56% spread between the highest ($194,590) and lowest ($109,500) adjusted prices of the comparables to be significantly higher than the industry standard of 10%, and concludes that this "indicates error in comparable selection and/or adjustments." Decl. at 3:8. Mr. Van Horn offers no indication of the effect of this alleged deficiency on Ms. Stoll's opinion of value. The court notes that the size of the total adjustments to the prices of the individual comparables are much lower – total net adjustments ranging from 1.7% to 11.9%, total gross adjustments from 5.2% to 21.7%.

Mr. Van Horn also states that the appraisal incorrectly reports market conditions as stable, whereas the "property's market area has had a plus or minus thirty (30) percent appreciation in [the] past twelve (12) months." Id. at 2:14-15. As with the spread of adjusted prices of the comparables, Mr. Van Horn does not indicate what effect this alleged flaw in the appraisal would have had on Ms. Stoll's conclusion. Without evidence on that issue, and considering that the appraisal contains a detailed analysis of market conditions, including an inventory analysis and an analysis of market sale and list prices, days on the market, and sales price as a percentage of list price, for the prior 7 - 12 months, the prior 4 - 6 months, and the prior 3 months, reflecting some factors as increasing, some as declining, and some as stable, the court is satisfied with Ms. Stoll's analysis.

Finally, Mr. Van Horn points out that Ms. Stoll has used a Fannie Mae form for her appraisal, which indicates in the pre-printed portion that the intended use of the appraisal is to evaluate the property for a mortgage finance transaction, whereas in Mr. Van Horn's view, Ms. Stoll's addition of "bankruptcy reasons" as an intended use was improper because the pre-printed form states that the form cannot be altered. Mr. Van Horn concludes that the appraisal is misleading and possibly in violation of the Uniform Standards of Appraisal Practice. The court does not find the appraisal to be misleading, and is in no position to render a ruling as to its compliance with applicable standards. In the court's view, Mr. Van Horn's comment has no bearing on the relative weight to be given to the debtor's and Ms. Stoll's opinions of value.

The court finds most significant the fact that Mr. Van Horn expressly states that he has reviewed Ms. Stoll's appraisal "for quality control issues," and "[is] not rendering any opinion as to the [property's] market value." Id. at 2:5-7. Although Mr. Van Horn concludes that his various complaints "would indicate significant deficiencies in the appraisal process" (id. at 4:1-2), he has chosen, apparently at the debtor's behest, not to suggest a value he would find reasonable, nor even to suggest whether his critiques of Ms. Stoll's appraisal render her value too high or too low.

To conclude, as between the testimony of the debtor, who has no experience or qualifications in the real estate industry (he has been self-employed as a handyman for 20 years), and Ms. Stoll, who has nine years of professional experience as a real estate appraiser, and who has conducted a thorough appraisal of the property and prepared a detailed report, the court readily gives greater weight to Ms. Stoll's opinion. The court arrives at this decision despite careful consideration of Mr. Van Horn's observations. The court concludes that the value of the property significantly exceeds $85,000, and the motion will be denied.

The court will hear the matter.

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1 Green Tree requested that the motion be denied or set for an evidentiary hearing. However, because Green Tree did not file a separate statement of disputed material factual issues, as required by LBR 9014-1(f)(1)(C), it consented to resolution of the motion on declarations. Id.

2 Declaration of David Van Horn, filed Sept. 24, 2013 ("Decl."), at 3:1-2.

3 Green Tree has since filed a timely proof of claim, asserting that its claim is secured for the full amount, $160,688.

4 See also In re Jester, 344 B.R. 331, 339 (Bankr. E.D. Pa. 2006) (the weight to be given the testimony of a property owner as to the property's value, "as with any evidence, must be determined by the trier of fact.").

4.	13-90327-D-13 TOG-4	TORIBIO TORRES AND BEATRIZ ROCHEL	MOTION TO CONFIRM PLAN 8-21-13 [86]

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 notice of hearing gives the hearing date as October 8, 2013 in the caption but October 21, 2013 in the text. Second, the plan proposes to pay the claim of BSI Financial Services, Inc., 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 denied the debtors' motion to value the collateral securing that claim by minute order filed June 26, 2013. As a result of the denial of that motion, the plan does not comply with LBR 3015-1(j).

As a result of this notice defect, and because the plan does not comply with LBR 3015-1(j), the motion will be denied by minute order. No appearance is necessary.

5. 11-92328-D-13 DALE/GLORIA BOUCHER
PLG-6

OBJECTION TO CLAIM OF DR. ROBIN R. HINCHMAN C/O LAW OFFICES OF MICHAEL LINN, CLAIM NUMBER 11
8-15-13 [90]

Tentative ruling:

This is debtors' objection to the claim of Dr. Robin Hinchman (the "claimant") for chiropractic services rendered to debtor Gloria Boucher (the "debtor") following a slip-and-fall accident in Ross Stores. The claim is in the amount of $4,086.59. The debtors do not object to the amount of the claim, but only to its secured status. The claimant has filed opposition. For the following reasons, the court intends to continue the hearing to allow the debtors to supplement the evidentiary record and, if the claimant so desires, allow the claimant to conduct limited discovery into the sole issue relevant to the court's decision.

The debtor filed a lawsuit against Ross Stores on account of the accident; the lawsuit settled in late 2010, and the debtor received net proceeds of $15,473.39 in January 2011. While the action was pending, the claimant had provided chiropractic services to the debtor, and the debtor had signed a document entitled "Personal Injury Lien," pursuant to which the debtor granted the claimant a security interest in the proceeds of any settlement, judgment, or verdict in the lawsuit. However, because of a dispute between the claimant and the debtor as to the amount owed, the claimant was not paid at the time the settlement proceeds were disbursed. Instead, the debtor's attorneys initially retained funds sufficient to cover the claim, but when negotiations broke down, the attorneys turned the funds over to the debtor at her direction, with the understanding she would be sued by the claimant.

In an earlier objection to the claim in this court, the debtor testified, "I contend that once the settlement proceeds were disbursed to me with the understanding that I would be sued by [the claimant], the security interest was lost." Declaration of Gloria Boucher, filed April 25, 2013, at 3:5-7. The debtor offered no legal argument for this conclusion, and no evidentiary support for the additional statement in her objection to claim (but missing from her supporting declaration) that "there [was] no longer any property on which the security could be attached." Objection to Claim, filed April 25, 2013, at 3:4-6. For both reasons (and also because of a service defect that has been cured with this new objection), the court overruled the debtor's objection.

With this new objection, the debtor has expanded her earlier testimony, as follows:

> **I contend that once the settlement proceeds were disbursed to me with the understanding that I would be sued by [the claimant], the security interest was lost, in that due to unforeseen circumstances, I had to spend the entire amount of the proceeds on various medical expenses related to my two sons' medical injuries and health problems before we filed the bankruptcy.**

Declaration of Gloria Boucher, filed August 15, 2013 ("Decl."), at 3:5-10. The debtor claims that for privacy reasons, she has not provided evidence of her payment of these expenditures on behalf of her sons, although she had earlier filed copies of medical bills incurred by her son in 2012 in support of a motion to confirm a plan. See Exhibits, filed May 2, 2013, Ex. 1. She states she has "provided to the Trustee all the evidence related to expenditure of the settlement proceeds . . . ." Decl. at 3:11-12. She does not indicate why privacy reasons did not prevent her from (1) providing the evidence to the trustee or (2) filing copies of her son's

2012 medical bills. These discrepancies, together with the fact that the debtor did not mention having spent the money in her original objection to claim, raise questions about the reliability of the debtor's conclusion that all the proceeds had been spent pre-petition.

Further, the debtor's statement quoted above – that she had to spend "the entire amount of the proceeds" on her sons' medical bills – appears only in connection with her reference to her attorneys disbursing the last $4,795 to her with the understanding she would be sued by the claimant. The debtor's statement is not sufficient to support the conclusion that the settlement funds initially disbursed to her, $15,473, were also spent on her sons' medical bills. The "Personal Injury Lien" document the debtor signed in favor of the claimant provided the claimant would have a lien on the settlement proceeds, not just that portion the debtor's attorneys later held back for the claimant. And the state court found, following a trial, that the written lien was enforceable. The debtor has not accounted for her disposition of the entire $20,268 she received during the six months prior to the bankruptcy filing sufficiently for the court to conclude that none of the proceeds remained with the debtors at the time the petition was filed.

On the other hand, the claimant's response creates an unnecessary and inappropriate diversion from the sole issue at stake in this claim objection – whether any proceeds of the settlement remained in the debtors' possession or under their control by the time of their bankruptcy filing; that is, whether any of the collateral for the claimant's medical lien remained. The claimant's response is directed almost entirely to questions about whether the debtors had a legal obligation to pay their sons' medical bills, and whether it was necessary and reasonable for them to do so. These questions might be relevant in, for example, an objection to dischargeability under § 523(a)(6); they have nothing to do with whether the claim is secured (that is, whether there was collateral for the claim at the time the case was filed) or unsecured.

At this point, the only evidence on this issue is the debtor's testimony that "[o]n the date of filing, I had $2,058.00 in my bank account, none of which was part of the insurance proceeds." Decl. at 3:14-15. This testimony is conclusory in nature, and unsupported by documentary evidence that apparently exists but that the debtors have chosen not to submit for privacy reasons. Because they have submitted similar documentary evidence of their sons' medical bills in 2012, the court questions their decision to withhold such evidence of their bills in 2011.[1]

The court will continue the hearing for the debtors to supplement the evidentiary record as to how they spent the settlement proceeds (the entire $20,268). The claimant will be permitted to conduct a limited amount of discovery to investigate this issue, but not the other issues raised by her response. Again, as regards the only matter before the court at this time, the necessity or reasonableness of the ways in which the debtors spent the money is simply not relevant. The court will not set the matter for an evidentiary hearing, as the disputed factual issues listed in the claimant's separate statement are not relevant to this claim objection.

The court will hear the matter.

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1 See In re Osborne, 257 B.R. 14, 19 n.7 (Bankr. C.D. Cal. 2000) ["The failure of a party to provide evidence peculiarly available to that party supports an inference that the truth would be damaging to that party."].

6. 13-91328-D-13 RDG-2 — BERNARD CLARK — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 8-30-13 [30]

Final ruling:

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

7. 09-90936-D-13 DN-7 — ROBERT/JOSIE ALVAREZ — MOTION TO AVOID LIEN OF CAPITAL ONE BANK 9-10-13 [97]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Capital One Bank (the "Bank"). The motion will be denied because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank (1) by first-class mail to the attention of an officer, managing or general agent, or agent for service of process, at the address of the collection agency that filed the Bank's proofs of claim in this case; and (2) by first-class mail to the attorneys who obtained the Bank's abstract of judgment. The first method was insufficient because the proofs of claim indicate the claims are still held by the Bank, not the collection agency, whereas the moving parties did not serve the Bank itself at all. The second method was insufficient because the attorneys have not appeared in this case on behalf of the Bank, and thus, the exception of subd. (1) of Rule 7004(h), allowing service on a bank's attorneys, is not applicable here.

The court notes that the moving parties attached to the proof of service a printout from the California Secretary of State's office showing that office has no record, and hence no registered agent for service of process, for the Bank. However, the rule requires service not on the agent for service of process of an FDIC-insured institution, but service to the attention of an officer of the institution itself (and only an officer), by certified mail.

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

8. 13-91337-D-13 ND-695 — JENNIE FUENTES — OBJECTION TO CONFIRMATION OF PLAN BY FIRST TENNESSEE BANK, N.A. 8-20-13 [15]

9. 08-91538-D-13 CJY-1 — JOHNNY/ANNIE CARRIZALES — MOTION TO EXCUSE DEBTOR ANNIE CARRIZALES FROM COMPLETING POST PETITION INSTRUCTIONAL COURSE AND 11 U.S.C. SECTION 1328 CERTIFICATE OR CERTIFICATE OF CHAPTER 13 DEBTOR RE: 11 U.S.C. SECTION 522 (Q) EXEMPTIONS 9-3-13 [89]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the Motion to Excuse Debtor Annie Carrizales from Completing Post Petition Instructional Course and 11 U.S.C. Section 1328 Certificate or Certificate of Chapter 13 Debtor re: 11 U.S.C. Section 522(q) Exemptions is supported by the record. As such the court will grant the Motion to Excuse Debtor Annie Carrizales from Completing Post Petition Instructional Course and 11 U.S.C. Section 1328 Certificate or Certificate of Chapter 13 Debtor re: 11 U.S.C. Section 522(q) Exemptions. Moving party is to submit an appropriate order. No appearance is necessary.

10. 13-91338-D-13 BTM-1 — TEJINDER GREWAL — OBJECTION TO CONFIRMATION OF PLAN BY VOLVO FINANCIAL SERVICES 9-10-13 [51]

Final ruling:

This case was dismissed on September 26, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

11. 13-91338-D-13 RDG-2 — TEJINDER GREWAL — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-6-13 [40]

Final ruling:

This case was dismissed on September 26, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

12. 11-93839-D-13 CJY-1 — MANUEL/MINERVA SORIA — MOTION FOR HARDSHIP DISCHARGE 8-29-13 [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 for Hardship Discharge is supported by the record. As such the court will grant the Motion for Hardship Discharge. Moving party is to submit an appropriate order. No appearance is necessary.

13. 10-92641-D-13 DONALD/KAREN KOCH — MOTION TO INCUR DEBT
RLB-8 — 9-20-13 [96]

Final ruling:

This is the debtors' motion to incur debt for the purchase of a vehicle. The motion will be denied for the following reasons. First, the notice of hearing states that the motion is being heard pursuant to LBR 9014-1(f)(2). However, the notice also states that "[a]ny opposition and supporting evidence must be presented at the hearing" (Notice of Hearing, filed September 20, 2013, emphasis added), whereas for motions brought on fewer than 28 days' notice, as this one was, there is no requirement to present evidence at the hearing. See LBR 9014-1(f)(2). This language in the notice of hearing may have inhibited parties-in-interest from appearing at the hearing. Pursuant to the local rules, the notice of hearing should have stated simply that no written opposition was required. See LBR 9014-1(d)(3) and (f)(2)(C).

Second, the proof of service was filed September 20, 2013, and signed September 20, 2013, whereas it states that service was made September 21, 2013, the next day. Thus, the proof of service cannot be accurate.

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

14. 13-90843-D-13 MICHAEL/SARAH MOSUNIC — MOTION TO VALUE COLLATERAL OF
JDP-1 — GE CAPITAL RETAIL BANK
9-10-13 [53]

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.

15. 13-91554-D-13 ROBERT/ELISSA HART — MOTION TO VALUE COLLATERAL OF
TPH-1 — WELLS FARGO BANK
8-28-13 [8]

Final ruling:

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

16. 13-91554-D-13 TPH-2 — ROBERT/ELISSA HART — MOTION TO VALUE COLLATERAL OF HSBC BANK 8-28-13 [12]

Final ruling:

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

17. 08-92263-D-13 JDP-1 — PATRICIA DURHAM — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 8-21-13 [76]

Final ruling:

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

18. 10-92864-D-13 JCW-2 — RAFAEL/ADRIANNA VERDIN — MOTION TO APPROVE LOAN MODIFICATION 8-29-13 [91]

Final Ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to approve loan modification is supported by the record. As such the court will grant the motion to approve loan modification by minute order. No appearance is necessary.

19. 10-90366-D-13 JDP-1 — JUAN COTO AND TRISTI CUMMINS — MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A. 8-28-13 [76]

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.

20. 12-92669-D-13 JCK-2 — KEVIN/DENISE HARDER — MOTION TO MODIFY PLAN 8-29-13 [46]

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. 13-91372-D-13 RDG-2 — TODD/ROSIE JONES — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-6-13 [27]

22. 08-91074-D-13 JDP-1 — JANET CHILDRESS — MOTION TO VALUE COLLATERAL OF OCWEN LOAN SERVICING, LLC 9-3-13 [87]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of OCWEN Loan 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 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 OCWEN Loan Servicing, LLC's secured claim at $0.00 by minute order. No further relief will be afforded. No appearance is necessary.

23. 13-90477-D-13 CJY-1 — CHRISTOPHER/KIMBERLY GLEESE — MOTION TO CONFIRM PLAN 8-22-13 [47]

24. 13-90085-D-13 LRR-5 — CHRISTIAN/SANDRA GUITRON — MOTION TO CONFIRM PLAN 8-13-13 [86]

25. 09-92790-D-13 JDP-1 — FRANK/BLANCA MILLAN — MOTION TO VALUE COLLATERAL OF BANK OF THE WEST 8-28-13 [46]

Final ruling:

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

26. 13-90312-D-13 DSP-3 — ALVARINO/SHIRLEY LEONARDO — MOTION TO AVOID LIEN OF MIDLAND CREDIT MANAGEMENT 9-6-13 [82]

Final ruling:

This case was dismissed on September 24, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

27. 13-90327-D-13 — TORIBIO TORRES AND BEATRIZ ROCHEL — OBJECTION TO CONFIRMATION OF PLAN BY POINTS WEST FINANCIAL GROUP SPE, LLC 9-25-13 [95]

Final ruling:

This is an objection by Points West Financial Group SPE, LLC ("Points West"), to the debtors' proposed chapter 13 plan. The objection will be overruled for the following reasons. First, the debtors have filed an original, a first amended, and a second amended plan in this case, whereas the objection does not indicate which of those plans Points West is objecting to. Second, the time for filing stand-alone objections to confirmation in this case has long since passed. See Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines, filed March 15, 2013. Third, the objection and notice of hearing do not contain a docket control number, as required by LBR 9014-1(c). If Points West's intention was to oppose the debtors'

motion to confirm their second amended plan, also on this calendar, Points West should have filed an opposition to the motion, which should have included the docket control number of the motion, TOG-4 (see LBR 9014-1(c)(4)), and should not have been accompanied by a notice of hearing. Finally, the objection and notice of hearing are not in compliance with LBR 9014-1(e)(3) because the proofs of service are attached to the objection and notice of hearing rather than being filed separately. (For Points West's information, the court notes that the debtors' motion to confirm their second amended plan, on this calendar, will be denied because of a notice defect and for failure to comply with LBR 3015-1(j).)

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

28.	11-93132-D-13 CJY-2	JESSE/SUSAN MIRELES	MOTION TO APPROVE LOAN MODIFICATION 9-19-13 [39]

29.	13-91337-D-13 BSH-1	JENNIE FUENTES	MOTION TO VALUE COLLATERAL OF FIRST TENNESSEE BANK, N.A. 9-19-13 [18]

30.	13-91338-D-13 JWC-1 GENERAL ELECTRIC CAPITAL CORPORATION VS.	TEJINDER GREWAL	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-19-13 [63]

Final ruling:

This case was dismissed on September 26, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

31. 13-91475-D-13 JAIME MUNGUIA
TOG-1

MOTION TO VALUE COLLATERAL OF ROGELIO LUNA
9-24-13 [45]

Tentative ruling:

This is the debtor's motion to value collateral held by Rogelio Luna (the "Creditor"). The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, if no appearance is made by or on behalf of the Creditor, the motion will be denied because the moving party failed to serve the Creditor in strict compliance with Fed. R. Bankr. P. 7004(b)(1), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Creditor at a street address by certified mail, whereas the rule requires that service on an individual be by first-class mail. See preamble to Fed. R. Bankr. P. 7004(b).

The court notes that an attorney has filed a request for special notice in this case on behalf of the Creditor; the moving party mailed copies of the moving papers to that attorney, and the court would expect the attorney to appear at the hearing. However, if he does not, the motion will be denied because the moving party failed to properly serve the Creditor, as described above, and there is no evidence the attorney is authorized to accept service of process on behalf of the Creditor pursuant to Fed. R. Bankr. P. 7004.

The court will hear the matter.

32. 13-91475-D-13 JAIME MUNGUIA
TOG-3

MOTION TO VALUE COLLATERAL OF MELVIN AND VICTORIA MYERS
9-24-13 [50]

Tentative ruling:

This is the debtor's motion to value collateral held by Melvin Myers and Victoria Myers (the "Creditors"). The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, if no appearance is made by or on behalf of the Creditors, the motion will be denied because the moving party failed to serve the Creditors in strict compliance with Fed. R. Bankr. P. 7004(b)(1), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Creditors at a street address by certified mail, whereas the rule requires that service on an individual be by first-class mail. See preamble to Fed. R. Bankr. P. 7004(b).

The court notes that an attorney has filed a request for special notice in this case on behalf of the Creditors; the moving party mailed copies of the moving papers to that attorney, and the court would expect the attorney to appear at the hearing. However, if he does not, the motion will be denied because the moving party failed to properly serve the Creditors, as described above, and there is no evidence the attorney is authorized to accept service of process on behalf of the Creditors pursuant to Fed. R. Bankr. P. 7004.

The court will hear the matter.