

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

August 20, 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.	12-34900-D-13 DN-3	GURJIT/TAJINDER BASRA	MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A. 7-23-13 [30]
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Final ruling:

This is the debtors' motion to avoid a judicial lien held by Citibank (South Dakota) N.A. (the "Bank"). The motion will be denied for the following reason.

According to the FDIC's website, the Bank is no longer doing business under the name Citibank (South Dakota) N.A., having merged into Citibank, National Association, an FDIC-insured institution. Thus, the Bank remains an FDIC-insured institution. 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, a managing agent or general agent, or agent for service of process;" (2) solely at the address of the attorneys who obtained the Bank's abstract of judgment. This method was insufficient for three reasons. First, the rule requires service to the attention of an officer, and only an officer, and not a managing or general agent or an agent for service of process.

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 agent or general agent, or agent for service of process" were 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)"

Second, the rule requires service on an FDIC-insured institution by certified mail, not first-class mail. Third, the rule requires service to the attention of an officer of the institution, whereas it is unlikely an officer of the Bank is to be found at the address of the law firm that obtained the Bank's abstract of judgment.

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

2. 13-27613-D-13 JAMES/JENNY BRADLEY OBJECTION TO CONFIRMATION OF
MDE-1 PLAN BY WELLS FARGO BANK, N.A.
6-28-13 [21]

Final ruling:

The objection will be overruled as moot. The debtors filed an amended plan on August 9, 2013, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

3. 10-48414-D-13 JOHN/DALE PHILLIPS CONTINUED MOTION TO MODIFY PLAN
DN-4 5-28-13 [80]

Final ruling:

The relief requested in the motion is supported by the record, the trustee has withdrawn his opposition, and no other timely opposition to the motion has been filed.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

4. 12-28729-D-13 JOAO/GRACIELA FERNANDES CONTINUED MOTION TO APPROVE
PD-1 LOAN MODIFICATION
6-6-13 [26]

5. 12-40729-D-13 MICHAEL/MELISSA MURRAY MOTION TO INCUR DEBT
JCK-4 7-17-13 [56]

Final ruling:

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

6. 12-40729-D-13 MICHAEL/MELISSA MURRAY MOTION TO MODIFY PLAN
JCK-5 7-17-13 [61]

Tentative ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The trustee has filed opposition on three grounds; the court has an additional concern. For the following reason, the court is unable to conclude that the plan has been proposed in good faith.

The debtors purchased a 2012 Nissan Altima on January 27, 2012, eleven months before they filed this case. They traded in a 2002 Nissan, and agreed to pay the balance of the purchase price, \$33,918 including taxes and fees, with interest at 1.9%, over six years, at \$499.21 per month. At this rate, the loan would have been paid off in February of 2018. By contrast, in their confirmed plan, the debtors proposed to repay the car loan, with 1.9% interest, at \$2,050.95 per month, over four times the amount of the contractually required payment, which would have resulted in the loan being paid off in just 15.3 months, or in March of 2014, virtually four years early. The debtors' plan payment under the confirmed plan was sufficient to pay, for the first 15 months of the plan, only trustee compensation, the debtors' attorney's fees, their mortgage payment, a payment toward their mortgage arrears, and the \$2,050.95 car payment, leaving nothing for unsecured creditors. Thus, unsecured creditors would not begin to receive payments under the plan until the car loan had been paid off, four years early.

The debtors' proposed modified plan reduces the payment on the car loan to \$809.31 per month. However, with the eight months of payments the debtors have already made through the plan, they have paid a total of \$16,407 on the car loan, reducing the principal balance of the loan from \$30,446 to \$14,335. (The debtors state in their supporting declaration they have not missed a plan payment.) At \$809.31 per month, the loan would be paid off in 18 more months, or in January of 2015, three years earlier than the date the loan would have been paid off under the terms of the contract. The debtors are only eight months into a 60-month case, and already, their income has dropped because they were underwithholding taxes, and their clothing and medical expenses have gone up. Their income has dropped by \$787 per month and their expenses have increased by \$499 per month; thus, they propose to lower their plan payment by \$1,286 per month.

In short, the debtors have utilized the first eight months of their plan to quadruple their car payment for what is apparently the sole purpose of paying off their car loan years early, thus benefitting themselves at the expense of their unsecured creditors, who will bear the risk of reduced income and higher expenses in the future, a risk that has already materialized once, by a significant amount. The court concludes that the debtors have intentionally set up a plan that makes car payments significantly in excess of the amount required by the contract to return nothing to unsecured creditors and this is not good faith.

The court will hear the matter.

7. 13-27529-D-13 PERPETUO/DEANNA BUYCO MOTION TO VALUE COLLATERAL OF
RAC-1 PNC BANK, N.A.
7-16-13 [16]

Final ruling:

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

8. 13-27529-D-13 PERPETUO/DEANNA BUYCO OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
7-19-13 [20]

9. 12-40730-D-13 KEITH/LEAH CONTINUED MOTION TO APPROVE
JCK-3 HETTMANNSPERGER LOAN MODIFICATION
6-7-13 [32]

10. 12-40730-D-13 KEITH/LEAH MOTION TO MODIFY PLAN
JCK-4 HETTMANNSPERGER 7-5-13 [44]

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.

11. 10-24731-D-13 DESIREE MINGOA CONTINUED MOTION FOR RELIEF
TJS-1 FROM AUTOMATIC STAY AND/OR
JPMORGAN CHASE BANK, N.A. MOTION FOR ADEQUATE PROTECTION
VS. 6-10-13 [25]

12. 10-52732-D-13 DAVID/REBECCA FOXWORTH MOTION TO VALUE COLLATERAL OF
JDP-1 U.S. BANK, N.A.
6-27-13 [30]

Final ruling:

The matter is resolved without oral argument. This is the debtors' 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 debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of U.S. Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

13. 13-20133-D-13 STANLEY/DEBORAH BRAZZEL MOTION TO MODIFY PLAN
CJY-1 7-10-13 [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.

14. 13-26034-D-13 GARY/SABRINA SCHWARTZ MOTION TO VALUE COLLATERAL OF
TBK-2 ACCESS CAPITOL SERVICES, INC.
7-23-13 [45]

15. 13-23735-D-13 TIMOTHY/ROSE FELZIEN MOTION TO CONFIRM PLAN
GFG-16 7-3-13 [46]

Final ruling:

This is the debtors' motion to confirm a chapter 13 plan. The motion will be denied because the plan provides for two secured claims at less than the full amounts of their claims, whereas the court will deny the debtors' motions to value the collateral securing those two claims (DC Nos. GFG-88 and GFG-19, also on this calendar). Pursuant to LBR 3015-1(j), because the debtors' motions to value collateral will be denied, this motion also 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.

16. 10-44141-D-13 AUDREY OGDEN MOTION TO APPROVE LOAN
HWW-2 MODIFICATION
7-7-13 [52]

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.

17. 10-44141-D-13 AUDREY OGDEN MOTION TO APPROVE LOAN
HWW-3 MODIFICATION
7-7-13 [56]

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.

18. 10-44141-D-13 AUDREY OGDEN MOTION TO MODIFY PLAN
HWW-4 7-16-13 [63]

Final ruling:

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

19. 10-44141-D-13 AUDREY OGDEN MOTION TO VALUE COLLATERAL OF
HWW-5 SPRINGLEAF FINANCIAL SERVICES,
INC.
7-23-13 [69]

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.

20. 12-27441-D-13 ANTHONY/NICHOLE MOTION TO SELL
CJY-2 KRONENBERGER 7-24-13 [22]

21. 13-26741-D-13 VICTOR/VARNA FACHA MOTION TO VALUE COLLATERAL OF
JGL-1 PNC BANK, N.A.
7-8-13 [14]

Final ruling:

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

22. 08-35943-D-13 KEVIN/ARTYE DAVIS MOTION TO MODIFY PLAN
JCK-4 7-15-13 [67]

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.

Tentative ruling:

This is the debtors' motion to approve the sale of the real property that was their residence. The trustee filed opposition, and the hearing was continued to allow the debtors to file supplemental evidence and the trustee to file a reply. Both have done so. For the following reasons, the court agrees with the trustee, and the motion will be denied.

The trustee's opposition to the motion was that the debtors had failed to explain where they intended to live following the sale, and had not disclosed what their new housing expenses would be. Without that information, the trustee was unable to determine the impact of the sale on the debtors' chapter 13 plan. The debtors filed a declaration in response, stating that they decided in the summer of last year not to keep their residence, and that they made their mortgage payments through October of last year and then moved and began paying rent in December of 2012. The debtors also described various changes in their income, and they itemized their current expenses, concluding that "although [their] living arrangements and financial circumstances have recently changed[,] [they] believe that the short sale of [their former residence] will not prevent [them] from successfully completing the Chapter 13 plan." Debtors' second amended declaration, filed July 29, 2013 ("Decl."), at 3:23-25.

The trustee's concern is not with the debtors' ability to complete the plan but with the fact that the rent payment is \$1,013 per month less than their mortgage payment was; thus, they have enjoyed - for the past eight months - and will continue to enjoy savings of \$1,013 in their housing expense, without proposing to share any of those savings with their creditors by way of a modified plan.¹ The court shares this concern, along with the trustee's concerns about the following increased expenses disclosed in the debtors' declaration:

- (1) Utilities - increased from \$687 to \$1,039 per month;
- (2) Insurance (presumably car insurance) - increased from \$270 to \$477;
- (3) "Incidentals" - increased from a total of \$635 to a total of \$1,220.

These increases have not been explained or documented by the debtors. The debtors' "incidental" expenses were unusually high even on their original Schedule J, and the increased figure is extraordinarily high, particularly in light of the fact that these expenses all fall into categories the creators of the official form did not see fit to include on Schedule J at all - school supplies, cosmetics/hair care, school/work lunches, Christmas and birthday gifts, pet care, coffee/snacks, and postage. These expenses represent a significant imbalance, as between the debtors' interest and that of their general unsecured creditors.

The court notes also that the debtors' household includes a 23-year old son and a 23-year old nephew, along with a 17-year old niece, whereas the debtors have not suggested they have any legal obligation to support their niece or nephew, and have not suggested the adult children are chronically ill or disabled, and as a result, unable to support themselves, such that the debtors should be permitted to support them at the expense of their creditors under § 707(b)(2)(A)(ii)(II) of the Code

(incorporated into the analysis for above-median income debtors by § 1325(b)(3)). The debtors have been supporting the two adult children (who were 19 at the time the case was commenced) and their niece, at the expense of their creditors, for the last four years despite the fact that they are significantly above-median income debtors, even for a family of five. (Their annualized current monthly income, as reported on their Form 22C, was \$133,039, as against the then-median income for a family of five, \$83,914.)

Finally, as the trustee notes, the debtors have been "trying to pay some of the medical co-pay obligations of Deborah's father who suffered a heart attack in December, 2012, followed by heart surgery in February, 2013," and they have been trying to "help one of [their] daughters with infant care expenses." Decl. at 3:17-20. The trustee objects that the debtors have failed to state the amounts contributed, the duration or regularity of these expenses, or to provide any other information to enable the trustee or the court to evaluate these expenses. The court would add that 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). The debtors have not shown that the debtor's father or their adult son or adult nephew falls within that definition, or that their daughter is unable to provide for her infant.

In conclusion, the trustee requests that the debtors be required to file a modified plan and provide evidence of their income and expenses in support of the motion. For the reasons stated above, without such evidence, and without a proposed modified plan, the present motion will be denied.

The court will hear the matter.

1 It appears the debtors had actually been enjoying an additional savings on their housing expense from even earlier than the fall of last year. According to their most recent amended Schedule J, filed April 30, 2009, their mortgage payment was \$3,004. Thus, apparently, at some point between that date and the fall of 2012, the mortgage payment was reduced to \$2,513, and the debtors enjoyed that savings - almost \$500 per month - until they stopped making the mortgage payment.

24. 13-20045-D-13 VICENTE/EVELYN HERNANDEZ MOTION TO CONFIRM PLAN
SJS-2 6-4-13 [48]
Final ruling:

This case was dismissed on June 4, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

25. 08-34947-D-13 KURT/JEANNIE MOELLER MOTION TO MODIFY PLAN
CJY-1 7-15-13 [122]

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.

26. 13-24047-D-13 EDMUNDO/MARIA MOLINA MOTION TO CONFIRM PLAN
MDL-4 6-26-13 [52]

Final ruling:

The motion will be denied as moot. The debtors filed an amended plan on August 1, 2013, making this motion moot. As a result the court will deny the motion without prejudice by minute order. No appearance is necessary.

27. 13-25356-D-13 CHRISTOPHER/JULIE CONDON OBJECTION TO CONFIRMATION OF
MBB-1 PLAN BY NATIONSTAR MORTGAGE,
LLC
7-9-13 [20]

Final ruling:

This is the objection of Nationstar Mortgage LLC ("Nationstar") to confirmation of the debtors' chapter 13 plan. Pursuant to LBR 3015-1(c)(4) and the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines issued in this case, objections to confirmation were required to be filed and served no later than June 12, 2013, and were required to be set for hearing on July 2, 2013. By contrast, Nationstar's objection was not filed and served until July 9, 2013, and was set for hearing on August 20, 2013. As a result, the objection was not timely filed, and no reason for the late filing has been advanced.

No timely objections having been filed, an order confirming the debtors' plan was signed and filed on July 11, 2013. As a result of the filing of the order confirming the plan, Nationstar's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

28. 13-23458-D-13 RONALD/JACQUELINE YUTUC MOTION TO CONFIRM PLAN
GJS-3 7-2-13 [41]

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.

29. 13-27258-D-13 TALANNA WILLIAMS
DVD-1

MOTION TO VALUE COLLATERAL OF
OWEN LOAN SERVICING, LLC
7-16-13 [35]

Final ruling:

This is the debtor's motion to value collateral of Ocwen Loan Servicing, LLC ("Ocwen"). The motion will be denied for two reasons. First, contrary to LBR 9014-1(c)(3), the moving papers contain a docket control number that has already been used by the moving party for an earlier motion in this case. Second, the moving party failed to serve Ocwen in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Ocwen (1) by first-class mail at a street address, with no attention line; and (2) by certified mail to the attention of an officer. The first method was insufficient because the rule requires that service be addressed to the attention of an officer, managing or general agent, or agent for service of process, whereas here there was no attention line.

The second method was insufficient because service was made by certified mail, whereas service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be by first-class mail, not certified mail.

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

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

30. 13-27258-D-13 TALANNA WILLIAMS
DVD-2

MOTION TO VALUE COLLATERAL OF
OWEN LOAN SERVICING, LLC
7-16-13 [39]

Final ruling:

This is the debtor's motion to value collateral of Ocwen Loan Servicing, LLC ("Ocwen"). The motion will be denied for two reasons. First, contrary to LBR 9014-1(c)(3), the moving papers contain a docket control number that has already been used by the moving party for an earlier motion in this case. Second, the moving party failed to serve Ocwen in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Ocwen (1) by first-class mail at a street address, with no attention line; and (2) by certified mail to the attention of an officer. The first method was insufficient because the rule requires that service be addressed to the attention of an officer, managing or general agent, or agent for service of process, whereas here there was no attention line.

The second method was insufficient because service was made by certified mail, whereas service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be by first-class mail, not certified mail.

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

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

31. 13-26459-D-13 MICHAEL CARLETON
PGM-1

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
7-10-13 [39]

Tentative ruling:

This is the debtor's motion to value the collateral securing the claim of JPMorgan Chase Bank (the "Bank") at \$0. The debtor alleges the value of the property is \$150,000 and the amount due on the first position deed of trust is \$165,000, leaving no value to secure the Bank's second position deed of trust. The Bank, on the other hand, has submitted the declaration of a licensed real estate appraiser, together with a copy of his appraisal, as evidence that the value of the property is \$220,000. The property is the debtor's principal residence; thus, if the Bank's second position deed of trust is wholly unsecured, the motion can be granted. In re Zimmer, 313 F.3d 1220, 1227 (9th Cir. 2002). However, if there is any value in the property over and above the amount due on the first, \$165,000, the motion must be denied. Nobelman v. American Sav. Bank, 508 U.S. 324, 325-26 (1993); see also In re Flores, 2012 Bankr. LEXIS 289, *11 (Bankr. N.D. Cal. 2012) ["if the Court finds [the creditor's] Lien to be secured by even \$1.00, the 'antimodification' protection of Bankruptcy Code section 1322(b)(2) applies and the claim must be paid as a secured claim and cannot be modified by Debtors' chapter 13 plan."].

The motion is supported only by the declaration of the debtor, a landscape contractor, who testifies that the fair market value of the property is \$150,000. He states he determined the value by reviewing zillow.com, reviewing comparable sales of homes in his neighborhood, and consulting with a realtor and/or broker.

An owner of property may testify to his or her opinion of the value of that property, with limitations:

If testifying under [Fed. R. Evid.] 701, the owner may merely give his opinion based on his personal familiarity [with] the property, often based to a great extent on what he paid for the property. On the other hand, if he is truly an expert qualified under the terms of Rule 702 "by knowledge, skill, experience, training or education . . .," then he may also rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon

the subject . . ." pursuant to Rule 703. For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc.

2 Russell, Bankruptcy Evidence Manual § 701:2, pp. 784-85 (West 2012-2013 ed.).

Here, the debtor has testified not to his opinion as an owner but to his opinion based on zillow.com, consultations with a realtor and/or broker, and the debtor's review of comparable sales. As to the first two of these, the debtor's testimony is hearsay. As to the latter, the debtor is not purporting to testify as an expert in the field of property appraisal, and has not shown his qualifications to evaluate comparable sales. See In re Meeks, 349 B.R. 19, 22 (Bankr. E.D. Cal. 2006). Thus, the court gives little, if any, weight to the debtor's opinion.

The Bank, on the other hand, has submitted the declaration of Robb Roberts, a licensed real estate appraiser since 2003, who prepared a fee appraisal of the property, including an evaluation of four comparable sales, and concluded that the market value of the property is \$220,000. The court gives significantly more weight to that evidence than to the debtor's opinion, and concludes that the value of the property is \$220,000. Thus, there is \$55,000 in value in the property over and above the amount due on the first, and pursuant to Nobelman, and the court will value the Bank's claim as partially secured.

The debtor has filed a reply to the Bank's opposition, in which he complains that the Bank's appraisal does not comply with the court's local rules because it "does not contain a declaration to qualify the 'expert' nor is there an authenticated declaration for the attached 'appraisal'." Debtor's Reply, filed August 13, 2013 ("Reply"), at 2:15-17. The debtor does not state which local rule he is referring to, and the Bank's appraisal is very clearly authenticated by the declaration of the appraiser, Robb Roberts, DN 57. To the extent, if any, the debtor's complaint is that the appraisal was not attached to and filed as part of the same document as the declaration, the local rules actually do require that exhibits be filed separately from the documents to which they relate. See Revised Guidelines for the Preparation of Documents, EDC 2-901, Guideline 6(a); LBR 9004-1(a) [requiring compliance with the Guidelines]. The Roberts declaration specifically refers to the "Appraisal attached to the Exhibits in Support of Creditor's Opposition to Debtor's First Amended Chapter 13 Plan and incorporated herein by reference." DN 57 at 1:26-2:1. The declaration and the exhibits were filed the same day, and they were timely filed. For these reasons, the court rejects the debtor's conclusion that "these documents [the opposition and exhibits] are hearsay and inadmissible." Reply at 2:18.

Finally, the debtor's question "Did creditor meet his burden of persuasion over the admissible lay opinion of the debtor?" is simply the wrong question. As discussed above, it is the debtor's opinion of value that is inadmissible, and it is the debtor who has the burden of proof. As discussed above, he has not satisfied it.

The court will hear the matter.

32. 10-52762-D-13 RICHARD CAIN
DN-3

MOTION TO MODIFY PLAN
7-3-13 [65]

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.

33. 13-26162-D-13 ERIC/RAQUEL ALMASON
RDG-2

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-26-13 [20]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the trustee's objection to confirmation of the debtors' proposed chapter 13 plan. The debtors have filed a reply, and the trustee has responded. For the following reasons, the objection will be sustained.

The trustee's objection is that the plan has not been proposed in good faith because the debtors' pay advices for the period January through April 2013 differ significantly from the figures shown on their Schedule I (and, the court notes, from those shown on their Form 22C). The trustee points out that debtor Raquel Almason's pay advices show that her average gross monthly earnings (not including her incentive bonus) for the first four months of this year were \$6,464, not \$6,225, as shown on the debtors' Schedule I, and that she received an incentive bonus of \$9,904 (in March of this year, according to the debtors' reply), which is not reflected on Schedule I at all. Further, debtor Eric Almason's pay advices for the same period show his average gross earnings were \$6,759, not \$6,229, as shown on Schedule I. In other words, on their Schedule I - signed under oath, the debtors understated Raquel Almason's gross wages by \$1,064 per month (\$239 + \$825 [amount of the bonus pro rated over 12 months]), and understated Eric Almason's by \$530. In sum, as the trustee points out, the debtors failed to disclose \$12,980 in income they received during the four months just prior to the filing.

The debtors' reply states that "since the filing the Debtors have suffered a large loss of income" (Debtors' Reply, filed July 19, 2013 ["Reply"], at 1:21-22) in that Mr. Almason has been placed on disability, as a result of which the debtors' overall income has decreased by \$2,051 per month. Further, "Debtors are under the impression that when the disability claim ends in October 2013 the Debtor will be forced to file for unemployment which will decrease the debtors['] income additionally by \$2,174.00." Reply at 1:25-2:3.

There are at least three problems with the reply. First, it is unsupported by any admissible evidence. Second, it does not address the debtors' failure to be truthful in preparing their schedules; further, the inaccurate schedules and Form 22C have not been corrected. Thus, the court is left to question whether the

debtors have complied in good faith with their duty of careful, complete, and accurate reporting in their schedules. See Hickman v. Hana (In re Hickman), 384 B.R. 832, 841 (9th Cir. BAP 2008), citing Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 417 (9th Cir. BAP 2007).

Finally, the reply does not explain on what basis the debtors believe Mr. Almason's disability will run out in October or where the debtors got the "impression" Mr. Almason will be forced to file for unemployment when his disability runs out. As the trustee concludes, the debtors have had the opportunity to present the facts (the hearing was continued for that purpose), and have failed to do so. Thus, the court agrees with the trustee that the debtors have failed to carry their burden of demonstrating that the plan has been proposed in good faith or that it is feasible, and the motion will be denied. The motion will be denied by minute order. No appearance is necessary.

34. 13-26962-D-13 SALVADOR MOYA AND ROSALBA MOTION TO VALUE COLLATERAL OF
SBS-1 HUERTA GREEN TREE SERVICING, LLC
7-16-13 [32]

Final ruling:

This is the debtors' motion to value collateral of Green Tree Servicing, LLC ("Green Tree"). The motion will be denied because (1) the moving parties failed to serve Green Tree in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b); and (2) the moving papers do not comply with the court's local rules. The moving parties served Green Tree at four different addresses, all of them by certified mail, whereas service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be by first-class mail, not certified mail.

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

The court notes also that the service list includes companies that act as agents for service of process for various corporations, partnerships, and other associations, whereas it appears service was addressed only to the agent for service of process, with no designation of Green Tree as the party on whose behalf service was being made. The court is not prepared to rule that service was improper for this reason; however, the better practice may be to include Green Tree's name in the name and address, along with the name of the agent for service.

Second, contrary to LBR 9014-1(c)(3), the moving papers contain a docket

control number that has already been used by the moving parties for an earlier motion in this case. Finally, the proof of service of the motion does not comply with section 4(b), (d), and (e) of the court's Revised Guidelines for the Preparation of Documents, EDC Form 2-901, as required by LBR 9004-1(a), because it does not contain a caption or the other information required by that section.

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

35. 13-27664-D-13 MANUEL ALFONSO OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
7-22-13 [17]

36. 13-28264-D-13 NOE/ROSE TREJO MOTION TO VALUE COLLATERAL OF
DVD-1 CITIBANK, N.A.
7-11-13 [14]

Final ruling:

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

37. 13-20578-D-13 DONNA BARNES MOTION TO CONFIRM PLAN
AKH-1 7-9-13 [41]

Final ruling:

This is the debtor's motion to confirm a chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve the creditor filing Claim No. 2 at the address on its proof of claim, as required by Fed. R. Bankr. P. 2002(g); (2) the moving party failed to serve the creditor filing Claim No. 3 at all, as required by Fed. R. Bankr. P. 2002(b); and (3) the plan fails to provide for the filed priority claim of the Franchise Tax Board; thus, the plan fails to comply with § 1322(a)(2) of the Bankruptcy Code. For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

38. 09-28679-D-13 JAMES HIESTAND AND MOTION TO MODIFY PLAN
CJY-2 STEPHANIE REYNA-HIESTAND 7-16-13 [93]

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.

39. 12-25482-D-13 HENRY/ORR HILL MOTION TO MODIFY PLAN
MLA-3 6-28-13 [58]

40. 09-23485-D-13 SHERRIE YANG MOTION TO MODIFY PLAN
CA-2 7-2-13 [86]

41. 11-46785-D-13 DEWAYNE/MILDRED WEDDLES CONTINUED AMENDED MOTION TO
GJS-3 INCUR DEBT
6-29-13 [68]

42. 11-46785-D-13 DEWAYNE/MILDRED WEDDLES MOTION TO MODIFY PLAN
JCK-4 7-15-13 [74]

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.

43. 11-48689-D-13 JOSEPH/MARY BOLANOS MOTION TO VALUE COLLATERAL OF
DN-2 THE BANK OF NEW YORK MELLON
7-23-13 [32]

Final ruling:

This is the debtors' motion to value collateral of the Bank of New York Mellon (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 to the attention of an "Officer/Managing Agent," 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/Managing Agent" were 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)"

In addition, the Bank's proof of claim filed in this case lists "c/o Ocwen Loan Servicing" as the name of the entity to whom notices should be addressed, whereas the moving parties failed to serve Ocwen Loan Servicing in accordance with its requests for special notice filed in this case.

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

44. 13-23689-D-13 EDWARD/VICKI HERNANDEZ MOTION TO VALUE COLLATERAL OF
TBK-2 JP MORGAN CHASE BANK, N.A.
7-22-13 [42]

Tentative ruling:

This is the debtors' motion to value collateral of JPMorgan Chase Bank, N.A. (the "Bank"). The Bank has filed opposition. For the following reasons, the motion will be granted.

The Bank's opposition was filed one week after the deadline required for the filing of written opposition, pursuant to LBR 9014-1(f)(1) and the notice of hearing on the motion. The Bank attempts to excuse its tardiness by claiming it was not served at a correct address for service. The debtors served the Bank (1) by certified mail to the attention of "Jaime Dimon, Chairman & CEO" at an address in New York City; and (2) through Patrick Brusio, an attorney who has previously appeared for the Bank in this case.

The Bank contends the New York City address "is not the correct address for service upon" the Bank. Bank's opposition, filed August 13, 2013, at 2:19-20. Instead, the Bank contends, it should have been served at its address as shown on the FDIC's website and the California Secretary of State's website. The Bank cites no authority for the proposition that the applicable rule, Fed. R. Bankr. P. 7004(h), requires service on an FDIC-insured institution at any particular address, and the court is aware of none. More importantly, the rule expressly states that service on an FDIC-insured institution must be by certified mail to the attention of an officer unless the institution has appeared by its attorney, in which case the institution shall be served through that attorney. Rule 7004(h), subd. (1). Here, the Bank had previously appeared in this action through attorney Patrick Brusio, who filed opposition on the Bank's behalf to an earlier motion for the same relief requested in this motion. The debtors properly served this new motion through Patrick Brusio, as required by the rule. Thus, service was proper.

The debtors' earlier motion was denied for lack of clarity in the relief requested and for lack of evidentiary support. With the new motion, the debtors have clarified the relief requested and have submitted an appraisal authenticated by the appraiser's declaration. The court concludes they have met their burden of demonstrating that the amount owed on the senior encumbrance exceeds the value of the real property. The Bank has offered no evidence in response except a broker's price opinion, which is hearsay. The Bank would like more time to obtain an appraisal. However, the Bank also requested more time in May of this year in response to the debtors' first motion; it has apparently not taken advantage of the time since then to obtain an appraisal.

The court concludes that the motion was properly served, no timely opposition has been filed, and the relief requested is supported by the record. As such, the court will grant the motion and set the amount of JPMorgan Chase Bank, N.A.'s claim at \$0.00 by minute order. No further relief will be afforded.

The court will hear the matter.

45. 11-20490-D-13 ROBERT/GINA DAVIS MOTION TO MODIFY PLAN
TBK-3 7-15-13 [62]
Final ruling:

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

46. 11-39090-D-13 STANFORD/DONNA MORRISON MOTION TO MODIFY PLAN
DN-6 7-11-13 [90]

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.

47. 13-25190-D-13 SALVADOR SOLARES AND MOTION TO VALUE COLLATERAL OF
ALB-2 MARIA VALENZUELA BANK OF AMERICA
7-12-13 [28]

Final ruling:

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

48. 12-27292-D-13 WALTER/NORA MENDEZ MOTION TO MODIFY PLAN
JCK-1 7-15-13 [27]

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.

49. 13-25395-D-13 ARNOLFO/MARIA LONZANIDA MOTION TO CONFIRM PLAN
GJS-4 6-28-13 [23]

Final ruling:

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

50. 13-21396-D-13 RICK/MELANIE PAYNE MOTION TO INCUR DEBT
TBK-3 7-22-13 [48]

Final ruling:

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

51. 13-24097-D-13 RONALD/STACEY GREENMYER MOTION TO CONFIRM PLAN
PK-1 7-8-13 [41]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The court is not prepared to grant the motion at this time for the following reasons: (1) the proof of service is not signed under oath, as required by 28 U.S.C. § 1746; and (2) the proof of service states that the "Chapter 13 Plan" was served, whereas the plan filed with this motion is a "First Amended Chapter 13 Plan." Thus, the record is not clear that it was the first amended plan that was served.

The court will continue the hearing to September 3, 2013, at 10:00 a.m., the moving party to file a corrected proof of service no later than August 22, 2013. The hearing will be continued by minute order. No appearance is necessary on August 20, 2013.

52. 08-22825-D-13 HECTOR/JOANNE INFANTE CONTINUED MOTION TO VALUE
JDP-1 COLLATERAL OF WELLS FARGO BANK,
N.A.
7-2-13 [61]

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.

53. 13-23735-D-13 TIMOTHY/ROSE FELZIEN AMENDED MOTION TO VALUE
GFG-87 COLLATERAL OF SANTANDER
8-5-13 [56]

Final ruling:

This is the debtors' motion to value collateral of Santander. The motion will be denied because the notice of hearing (1) does not state the courtroom where the hearing will be held, as required by LBR 9014-1(d)(2); and (2) purports to require that if the potential respondent mails a response, it must be mailed in time for the court to receive it before the hearing date, whereas there is no such requirement

for a motion brought, as this one was, pursuant to LBR 9014-1(f)(2). Further, the notice improperly states, "You are not required to file a response if less than 28 days notice is given of the hearing." The rule does not require the potential respondent to calculate how much notice was given; instead, the rule requires an unequivocal statement in the notice as to whether or not written opposition is required. LBR 9014-1(d)(3). Finally, at the end of the notice of hearing is a "certification," in which the debtors' attorney purports to certify under oath that the contents of the "foregoing Motion for Order Extending § 362 Automatic Stay" are true and correct to the best of his knowledge and belief. This language creates confusion because this is a motion to value collateral.

The motion will be denied for the additional independent reason that National Capital Management, Inc., has filed a proof of claim in this case naming itself as the holder of the claim, whereas the motion mentions only Santander, and the moving parties served only Santander and not National Capital Management, Inc.

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

54. 13-23735-D-13 TIMOTHY/ROSE FELZIEN
GFG-19

MOTION TO VALUE COLLATERAL OF
AMERICAN GENERAL/SPRINGLEAF
8-5-13 [57]

Final ruling:

This is the debtors' motion to value collateral of American General/Springleaf. The motion will be denied because the notice of hearing (1) does not state the courtroom where the hearing will be held, as required by LBR 9014-1(d)(2); and (2) purports to require that if the potential respondent mails a response, it must be mailed in time for the court to receive it before the hearing date, whereas there is no such requirement for a motion brought, as this one was, pursuant to LBR 9014-1(f)(2). Further, the notice improperly states, "You are not required to file a response if less than 28 days notice is given of the hearing." The rule does not require the potential respondent to calculate how much notice was given; instead, the rule requires an unequivocal statement in the notice as to whether or not written opposition is required. LBR 9014-1(d)(3). Finally, at the end of the notice of hearing is a "certification," in which the debtors' attorney purports to certify under oath that the contents of the "foregoing Motion for Order Extending § 362 Automatic Stay" are true and correct to the best of his knowledge and belief. This language creates confusion because this is a motion to value collateral.

The motion will be denied for the additional independent reason that LVNV Funding, LLC, has filed a proof of claim in this case naming itself as the holder of the claim, whereas the motion mentions only American General/Springleaf, and the moving parties served only American General Finance and Springleaf Financial and not LVNV Funding, LLC.

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

55. 12-36750-D-13 CHARLES/JULIANNE RUIZ
JAD-2

MOTION TO INCUR DEBT
7-31-13 [66]

56. 10-49972-D-13 VENISE/MAURICE SMALLEY

MOTION TO MODIFY PLAN
7-31-13 [166]

Final ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties gave only 20 days' notice of the hearing rather than 35 days', as required by LBR 3015-1(d) (2) and applicable rules; (2) the moving parties served only the creditors who have filed claims in this case, and not the other creditors listed on their schedules, as required by Fed. R. Bankr. P. 2002(b); (3) the moving parties failed to serve the IRS at its address on the current Roster of Governmental Agencies, as required by LBR 2002-1(c); (4) the notice of motion and motion are a single document, whereas LBR 9014-1(d) (2) requires the filing of a motion and a separate notice of hearing; and (5) the plan is not clear as to the length of the plan and the amounts of the plan payments. Specifically, the plan calls for payments of \$1,002.62 per month for 29 months, whereas the motion describes the plan as follows: "Plan payments shall total \$25,059.02 in months 1-31 of the Plan. Beginning month 32 (August 2013), Plan payments shall total \$1,000.73 per month for the remainder of the Plan." Thus, it appears the reference in the plan itself to 29 months as the plan term refers only to the remaining 29 months of a 60-month plan. Any plan filed in a chapter 13 case, whether the original plan or an amended or modified plan, should set forth the terms of the plan for the entire plan term. Thus, the plan should set forth the terms stated in the motion.

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

57. 13-29578-D-13 WILLAIM BUDREWICZ
JAB-1
U.S. BANK, N.A., ND VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-2-13 [12]

58. 13-23687-D-13 ANNA PINKEY
TBK-3

CONTINUED MOTION TO VALUE
COLLATERAL OF GREEN TREE
SERVICING, LLC (2ND D.O.T.)
7-22-13 [33]