

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Modesto, California

August 27, 2013 at 10:00 a.m.

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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.	13-91104-D-13	FABIO/NORA SOTELO	MOTION TO VALUE COLLATERAL OF
	CSL-1		PNC MORTGAGE
			7-8-13 [15]

Final ruling:

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

2. 11-92005-D-13 GILBERT/TAMARA AMBALONG MOTION TO VALUE COLLATERAL OF  
JDP-1 WELLS FARGO BANK, N.A.  
7-17-13 [52]

**Final ruling:**

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

3. 11-92005-D-13 GILBERT/TAMARA AMBALONG MOTION TO VALUE COLLATERAL OF  
JDP-2 KEY BANK, N.A.  
7-17-13 [56]

**Final ruling:**

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

4. 12-90605-D-13 MARCELLA WITT MOTION TO MODIFY PLAN  
CJY-4 7-23-13 [33]

5. 13-90205-D-13 MATTHEW/JOSIELYNN CRUDO CONTINUED MOTION TO CONFIRM  
PGM-3 PLAN  
5-16-13 [56]

**Final ruling:**

The court finds that a hearing will not be helpful and is not necessary. This is the debtors' motion to confirm an amended chapter 13 plan. The trustee filed opposition, and the debtors filed a reply. The hearing was then continued for the debtors to file supplemental evidence, which they have done, and for both parties to file additional argument, which they have done. For the following reasons, the court concludes that the debtors have failed to meet their burden to demonstrate

that the plan has been proposed in good faith, that it meets the disposable income test, or that it meets the liquidation test, and the motion will be denied. The court will take the trustee's objections in the order they were raised.

#### Voluntary retirement contributions

The trustee objects that the plan is not proposed in good faith because the debtors are making voluntary retirement contributions totaling \$1,053 per month while proposing to pay their general unsecured creditors a dividend of just 23%. The court agreed with the trustee on this same point in its ruling on the debtors' motion to confirm their original plan in this case, stating explicitly that this court follows Parks v. Drummond (In re Parks), 475 B.R. 703, 709 (9th Cir. 2012). The debtors' response this time around is that "Debtors' plan excludes the 401k contribution as is reflected in the increased payment under the amended plan." Debtors' Reply, filed July 2, 2013 ("Reply"), at 1:19-20. That statement is inaccurate and misleading. The debtors increased their plan payment back in May, in response to an earlier objection by the trustee that the debtors were overwithholding on their taxes and improperly paying educational expenses for adult children. The increase in the plan payment resulted solely from the debtors reducing their withholdings and their educational expenses; the debtors are still making \$1,053 per month in voluntary retirement contributions. The court agrees with the trustee that the plan is not proposed in good faith.

#### Debtors' Form 22C and amended Form 22C

The trustee objects that the plan is not proposed in good faith because the debtors' Form 22C has been completed incorrectly, and does not meet the disposable income test because it proposes to pay only 23% to general unsecured creditors, whereas if the Form 22C were prepared correctly, it would show that the debtors' monthly disposable income is sufficient to pay 98%. The trustee has itemized six different line items on the debtors' original Form 22C as incorrect, and concludes that when the appropriate adjustments are made, the bottom line, line 59 - the debtors' monthly disposable income, is \$3,500.99 rather than <\$639.30>, as the debtors' form showed. The debtors have responded satisfactorily as to two of these six items.

Line 30 - income taxes, social security taxes, Medicare taxes. The debtors listed \$4,385.21 on their Form 22C, whereas they listed only \$3,403 in total on their most recent Schedule I (\$806.07 + \$2,165.53 + \$348.75 + \$83.07). (Their original Schedule J also included \$650 labelled as "OFFSET Irs" and "OFFSET Ftb;" those were removed on their amended Schedule J.) The debtors have responded: "The Debtors' [sic] have amended the B22C form and excluded the amount the debtors had actually been deducting to avoid tax liabilities pre-petition. As such, the debtor has made the requested correction." Reply, at 1:24-28. On July 25, 2013, the debtors filed an amended Form 22C on which they changed the figure on line 30 from \$4,385.21 to \$3,689.37. By contrast, as the trustee correctly observed, the total of tax withholdings on the debtors' amended Schedule I is \$3,403, not \$3,689. The court has not been able to figure out where the \$3,689 comes from.

Line 31 - other involuntary deductions for employment. The debtors listed \$1,582.55 on their Form 22C, whereas they listed only \$336.29 on their Schedule I: for their 401(k) loan repayment. The debtors contend, "[t]he difference referred to in the Trustee's objection concerns 401k deductions pre-petition, which was [sic] being deducted, but is not [sic] longer a proper deduction going forward. As such, the debtor has made the requested correction." Reply, at 2:1-3. However, on the

amended Form 22C, the figure has not been changed; it remains \$1,582.55.

Line 35 - child care expense. The debtors listed \$600 as their child care expense on their Form 22C, whereas they listed no child care expense on their amended Schedule J. The debtors claim the \$600 in "car repairs" listed on their amended Schedule J was the result of a computer error; it should have said "child care." The debtors' original Schedule J included \$600 for child care; they have filed a second amended Schedule J, changing "car repairs" to "child care," and they have provided documentary evidence of the child care expense. Thus, they have resolved this issue.

Line 36 - health care expenses. The debtors listed \$372 on their Form 22C, but only \$155 on their Schedule J. The debtors claim the Form 22C figure includes \$155 from their Schedule J plus \$217 in medical payroll deductions. The attachment to the debtors' Schedule I lists "medical" and "dental," but with no deductions for either. Further, the instructions on the Form 22C make clear that the figure on line 36 is to be the amount actually expended on health care limited to the amount that is in excess of the amount entered on line 24B. The debtors listed \$360 on line 24B; thus, without further explanation, the amount on line 36 should be \$12 at most.

Line 43 - education expenses for children under 18. The debtors listed \$600 on their Form 22C and also on their original Schedule J. The Form 22C instructions make clear that the deduction is to be limited to \$147.92 per child less than 18 years of age, whereas only two of the debtors' four children living at home are under 18. The instructions also require documentation, and the debtors must explain why the amount is not already accounted for in the IRS standards. On their amended Form 22C, the debtors have removed the \$600 figure entirely. Thus, this issue has been resolved.

Lines 47a and 47b - future payments on secured claims. The trustee objected that the figures shown on the debtors' Form 22C for their mortgage and car payments were both higher than the monthly amounts provided for in their proposed plan. The debtors responded that the trustee was correct as to the mortgage payment, but not as to the car payment. However, on their amended Form 22C, the debtors increased the mortgage payment and left the car payment the same. The court would need to confirm with the trustee that the mortgage payment has actually been increased by the lender. As for the car payment, however, the debtors' calculation is based on the full amount of the lender's claim, \$6,235, whereas it should be based on the value of the secured portion of the claim, \$2,400, as determined on the debtors' motion to value.

While two of the trustee's objections to the debtors' Form 22C have been satisfactorily addressed, the other four have not. Thus, although the 98% dividend the trustee believed to be appropriate, based on the original Form 22C, may not be necessary, the trustee is correct that the 23% provided for by the plan fails the disposable income test. Because of the discrepancies discussed above, and because neither the debtors' Form 22C nor their amended Form 22C has been prepared correctly, the court concludes that the plan is not proposed in good faith.

Estate of Richard Crudo and Team Crudo, LLC

The trustee objects that the plan is not proposed in good faith and does not pass the liquidation test because the debtors have failed to adequately disclose and document debtor Matthew Crudo's interest in his late father's estate and in an

entity known as Team Crudo, LLC. The debtor's father, Richard Crudo, died on November 30, 2010, six months into his own chapter 13 case, Case No. 10-34421-B-13 in this district. The trustee has reviewed testamentary documents pursuant to which the debtor in this case, Matthew Crudo, and his three sisters each received a 25% interest in Richard Crudo's estate. After Richard Crudo's death, the four siblings created Team Crudo, LLC, to continue operating his beer and wine bar known as The Trap, at 6125 Riverside Blvd., Sacramento, California. The siblings are continuing to make payments under Richard Crudo's confirmed chapter 13 plan, a plan that proposes to pay certain tax debt, along with a 2% dividend to general unsecured creditors.

The trustee in this case has not received documents sufficient to allow him to determine the value of (1) Matthew Crudo's 25% interest in Team Crudo, LLC; or (2) Matthew Crudo's 25% interest in the other assets of his father's estate. The debtors' original Schedule B in this case values debtor Matthew Crudo's interest in these assets at \$5,000, describing them as follows: "TEAM CRUDO LLC - 1/4 interest in the estate of richard crudo; subject to chapter 13 discharge and the res of the bar "THE TRAP" to which team crudo llc owns 50% land/bldg subject to dot." Schedule B, DN 1, at 20. An amended Schedule B adds asset and liability totals for Team Crudo, LLC as of the end of 2011 and income and expense information for 2012 and for another year, presumably 2011, and suggests that the bar is barely profitable. The trustee believes, however, based on additional documents he has reviewed, that the business has value.

After the trustee filed his opposition, the debtors submitted a declaration of and appraisal by David LaBella, who has concluded that the value of the real property is \$138,000. The trustee accepts this valuation, but still cannot determine the liquidation value of the debtors' estate in this case because the debtors have not provided evidence of the alleged lien against the property. The debtors have responded that they are having trouble getting documentation of the lien because the loan is not in their name. The court notes that Richard Crudo did not list any liens against the property or the business on his own bankruptcy schedules, of which the court takes judicial notice; thus, the only admissible evidence on this point at this time is that there is no lien against the property or the business. Apparently, the four siblings own a 50% interest in the real property, with the other 50% being owned by the Deolinda M. Lacey Trust, according to the LaBella appraisal. Assuming the property is owned free and clear, the value of the siblings' interest is \$69,000, and the value of Matthew Crudo's interest is \$17,250, significantly greater than the \$5,000 scheduled by the debtors as the value of Matthew Crudo's interest in the business and the real property combined.

The debtors conclude that whether there is a lien on the property, and if so in what amount, will not affect the liquidation analysis in any event. The debtors' analysis is confusing at best, and in any event, appears to be based on fluctuating figures for the amount of their priority debt.<sup>1</sup> To conclude, the court agrees with the trustee that the debtors have failed to establish that the plan passes the liquidation test.

For the reasons stated, the court concludes that the debtors have not met their burden of demonstrating that the plan has been proposed in good faith, that it meets the disposable income test, or that it meets the liquidation test; accordingly, the motion will be denied. The motion will be denied by minute order. No appearance is necessary.

1 The analysis is this:

[I]n that the debtors have some \$30k in priority debts, even if the value has increased by \$120k, the difference would not effect [sic] the analysis in this case, or based on the B22C form, the debtor's interest would have to exceed \$45,000 to effect [sic] the plan since that is being paid to unsecured creditors already.

Reply of Debtors, filed July 2, 2013, at 4:7-11. The court cannot determine where any of these three figures comes from. The amount of priority debt according to the debtors' Schedule E is \$19,000; their sur-reply filed August 12, 2013 gives the amount of priority debt as \$10,657.98, but the total of priority claims actually filed is only \$2,220. (The governmental and non-governmental unit claims bar dates have both run.)

6. 10-92406-D-13 JAMES TELFER MOTION TO VALUE COLLATERAL OF  
JDP-1 RBS CITIZENS N.A.  
7-18-13 [38]

**Final ruling:**

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

7. 09-94007-D-13 JOSE/LORETTA PAZ CONTINUED MOTION TO MODIFY PLAN  
CJY-6 6-13-13 [74]

8. 12-91007-D-13 RICHARD/JAMIE RICKER MOTION TO MODIFY PLAN  
CJY-5 7-22-13 [87]

**Final ruling:**

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

9. 10-91210-D-13 DEWITT/PATRICIA ORTON MOTION FOR EXEMPTION FROM  
CJY-3 FINANCIAL MANAGEMENT COURSE  
AND/OR MOTION TO EXCUSE BOTH  
DEBTORS FROM COMPLETING 11  
U.S.C. SECTION 1328 CERTIFICATE  
OR CERTIFICATE OF CHAPTER 13  
DEBTOR RE: 11 U.S.C. SECTION  
522(Q) EXEMPTIONS  
7-18-13 [43]

**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 Patricia M. Orton from Completing Post Petition Instructional Course and to Excuse Both Debtors from Completing 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 Patricia M. Orton from Completing Post Petition Instructional Course and to Excuse Both Debtors from Completing 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. 09-93415-D-13 EMILY CARRASCO MOTION TO VALUE COLLATERAL OF  
JDP-1 JP MORGAN CHASE, N.A.  
7-15-13 [95]

**Final ruling:**

This matter has been resolved by stipulation, which has been approved by the court. The matter will be removed from calendar.

11. 13-90120-D-13 ROBERT/MICHELLE CHEATHAM MOTION TO CONFIRM PLAN  
BPC-2 7-8-13 [51]

**Final ruling:**

This case was dismissed on July 10, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

12. 08-91328-D-13 JAMES/LORNA WOODMANSEE MOTION TO MODIFY PLAN  
CJY-2 7-22-13 [82]

13. 08-92735-D-13 PHILLIP/MARIA ORTIZ MOTION TO VALUE COLLATERAL OF  
JDP-1 GE CAPITAL RETAIL BANK  
7-24-13 [103]

**Final ruling:**

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

14. 13-90939-D-13 KENT GONZALES MOTION TO CONFIRM PLAN  
CJY-1 7-12-13 [17]

**Final ruling:**

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

15. 13-90342-D-13 GREGORY SCOTT MOTION TO CONFIRM PLAN  
DCJ-3 7-15-13 [58]

16. 13-90843-D-13 MICHAEL/SARAH MOSUNIC MOTION TO CONFIRM PLAN  
JDP-2 7-3-13 [21]

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties failed to serve the six creditors added to their Schedule F by amendment filed July 25, 2013, as required by Fed. R. Bankr. P. 2002(b); and (2) the plan proposes to pay the secured claim of GE Capital Retail Bank in an amount less than the full amount of its claim, whereas the moving parties have failed to file a motion for an order valuing the collateral securing that claim, as required by LBR 3015-1(j). For these reasons, the motion will be denied by minute order. No appearance is necessary.

17. 11-92444-D-13 TYSON/JANA LEE MOTION TO MODIFY PLAN  
CJY-3 7-18-13 [55]

**Final ruling:**

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

18. 13-90947-D-13 JAIME MUNGUIA OBJECTION TO DEBTOR'S CLAIM OF  
RDG-4 EXEMPTIONS  
7-12-13 [28]

**Final ruling:**

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

19. 13-90650-D-13 JEFFREY HANEY AND MARY MOTION TO CONFIRM PLAN  
RLF-2 DAVIS 7-9-13 [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.

20. 08-92160-D-13 MANUEL/DELIA LUNA MOTION TO VALUE COLLATERAL OF  
JDP-1 JP MORGAN CHASE BANK, N.A.  
7-18-13 [88]

**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.

21. 09-91565-D-13 ARLENE ELLIOTT  
DN-2

MOTION TO MODIFY PLAN  
7-12-13 [51]

22. 10-91265-D-13 JOSE CARDENAS  
JDP-1

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
7-24-13 [36]

**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.

23. 13-91270-D-13 DONALD/SONDRA WISSNER  
JDP-1

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
7-10-13 [8]

**Final ruling:**

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

24. 09-91074-D-13 ABEL/ALICIA VIGIL  
TJS-1  
JPMORGAN CHASE BANK, N.A.  
VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-19-13 [70]

**Final ruling:**

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

25. 09-91977-D-13 SONIA LOPEZ  
BSH-11

CONTINUED MOTION TO MODIFY PLAN  
5-3-13 [183]

**Final ruling:**

This is the debtor's motion to confirm a modified chapter 13 plan. The trustee filed opposition, and the hearing was continued to allow the debtor to supplement the record, and the trustee to file a response. The debtor has now filed additional evidence, in the form of amended Schedules I and J and a declaration, and the trustee has filed a reply.

The debtor has satisfactorily addressed all of the trustee's concerns, and but for those concerns, the relief requested in the motion is supported by the record. 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 modification to plan, which shall include the additional language requested by the trustee and agreed to by the debtor. The moving party 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. 08-91078-D-13 WAYNE/SHAWN DONAHUE  
JDP-1

MOTION TO VALUE COLLATERAL OF  
UNITED GUARANTY RESIDENTIAL OF  
NORTH CAROLINA  
7-15-13 [50]

**Final ruling:**

This is the debtors' motion to value collateral of United Guaranty Residential of North Carolina. The court is not prepared to grant the motion because the proof of service does not state the date of service or the date the proof of service was signed. The court will continue the hearing to September 10, 2013, at 10:00 a.m., the moving parties to file a corrected proof of service no later than September 3, 2013. The hearing will be continued by minute order. No appearance is necessary on August 27, 2013.

27. 13-91184-D-13 GAIL ADAMS-BAILEY  
JAD-1

MOTION TO VALUE COLLATERAL OF  
GREEN TREE SERVICING LLC  
7-2-13 [10]

**Final ruling:**

This is the debtor's motion to value collateral of Green Tree Servicing LLC ("Green Tree"). The motion will be denied because the debtor 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). The debtor served Green Tree (1) at a street address with no attention line; (2) by certified mail to the attention of a named chief operating officer; and (3) by certified mail to the attention of its agent for service of process. The first method was insufficient because the rule requires service on a corporation or other unincorporated association to the attention of officer, managing or general agent, or agent for service of process. The second and third methods were insufficient because service on a corporation 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 defects, the motion will be denied by minute order. No appearance is necessary.

28. 13-90591-D-13 STEVEN/SHELLEY WARNER MOTION TO CONFIRM PLAN  
BPC-3 7-11-13 [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.

29. 11-94222-D-13 SHELLEY SHAHEN MOTION TO VALUE COLLATERAL OF  
DCJ-1 FARMERS AND MERCHANTS BANK OF  
CENTRAL CALIFORNIA  
8-13-13 [49]

30. 11-94222-D-13 SHELLEY SHAHEN MOTION TO VALUE COLLATERAL OF  
DCJ-2 FARMERS AND MERCHANTS BANK OF  
CENTRAL CALIFORNIA  
8-13-13 [53]

31. 13-90342-D-13 GREGORY SCOTT MOTION TO VALUE COLLATERAL OF  
DCJ-4 BANK OF AMERICA, N.A.  
8-13-13 [68]

32. 10-95054-D-13 TONY/ANOMA FONTES CONTINUED MOTION TO MODIFY PLAN  
BSH-5 6-19-13 [71]

**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.

33. 13-29872-D-13 TORIE ESCAMILLA MOTION TO EXTEND DEADLINE TO  
DEF-1 FILE SCHEDULES OR PROVIDE  
REQUIRED INFORMATION  
8-7-13 [9]

34. 13-90581-D-13 JOHN/BARBARA GEORGE MOTION TO VALUE COLLATERAL OF  
MDA-3 PNC BANK NATIONAL ASSOCIATION  
8-13-13 [42]

**Final ruling:**

This is the debtors' motion to value collateral of PNC Bank (the "Bank"). The motion will be denied for two reasons. First, the moving parties served the Bank by certified mail to the attention of an "Officer, A Managing Officer or General Agent for Service of Process" whereas the rule requires service to the attention of an officer, and only an officer, and not a managing officer 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 Officer or General 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 notice of hearing states that the debtors seek an order "valuing the collateral of [address] in the amount of \$175,000, and the balance of the second deed of trust to be treated as a general unsecured claim," which suggests that \$175,000 of the claim is to be treated as secured, whereas the court believes the debtors are actually seeking to have the entirety of the claim secured by the deed of trust treated as a general unsecured claim; that is, they are seeking to value the collateral of the Bank at \$0. The debtor notes in his declaration that the Bank's proof of claim lists the value of the property at \$175,000; however, it also lists the claim, in the amount of \$147,924, as fully secured. In short, the notice of hearing is insufficiently clear to give notice to the Bank of the nature of the relief requested.

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

35. 12-91592-D-13 SCOTT/MARIA TILLERY MOTION TO INCUR DEBT  
CJY-5 8-8-13 [67]

36. 09-93999-D-13 ERIC/RASHONDA MELLO MOTION TO VALUE COLLATERAL OF  
JDP-1 CITIBANK, N.A.  
8-12-13 [60]