

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Modesto, California

September 10, 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	OBJECTION TO CONFIRMATION OF
	RDG-2		PLAN BY RUSSELL D. GREER
			8-9-13 [22]

Final ruling:

This is the trustee's objection to confirmation of the debtors' chapter 13 plan. On August 23, 2013, the debtors filed an amended plan. As a result of the filing of the amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

The debtors and their counsel should note that the court will not act on the amended plan unless and until the debtors have filed, served, and set for hearing a motion to confirm it. See LBR 3015-1(d) (1).

2. 13-90809-D-13 HAL SMULSON  
SSA-5

MOTION TO CONFIRM PLAN  
7-25-13 [56]

**Final ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons. First, the moving party failed to serve Barclays Bank and Chase Bank, listed on his schedules, as required by Fed. R. Bankr. P. 2002(b). The moving party listed these creditors on his schedules with "unknown" addresses; however, there is no evidence of why the moving party has been unable to obtain at least one address for each of these creditors. Second, the moving party failed to serve Betty Smulson, his former spouse and a "disputed" creditor, at the address listed for her on the debtor's schedules, as required by Fed. R. Bankr. P. 2002(g)(2). The court notes that a change of address form was filed for Betty Smulson, but it was signed and presumably filed by the debtor's attorney. Given that the creditor is listed as holding a disputed claim, the court will require compliance with Fed. R. Bankr. P. 2002(g)(2) pending the submission, if any, of a change of address signed by the creditor.

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

3. 12-92611-D-13 MICHAEL/KERRY COBB  
JAD-1

MOTION TO INCUR DEBT  
8-1-13 [26]

**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.

4. 12-92611-D-13 MICHAEL/KERRY COBB  
JAD-2

MOTION TO MODIFY PLAN  
8-1-13 [31]

**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.

**Final ruling:**

This is the debtors' motion to confirm a fifth amended chapter 13 plan. The motion will be denied for the following reasons. First, the motion was not filed until three weeks after an "amended notice of hearing" was filed. LBR 9014-1(d)(2) requires that every motion be accompanied by a separate notice of hearing; there is no provision in the local rules for a notice of hearing to be filed without an accompanying motion. Second, the notice of hearing is entitled an "amended notice of hearing," but there is nothing to indicate what earlier notice of hearing is being amended. Third, the title of the motion refers to a fifth amended plan, but there is no such plan on file. In fact, the plan filed with the amended notice of hearing is not even entitled "amended" plan; instead, the title is simply "Chapter 13 Plan."

Fourth, the moving parties served only the judge, the chapter 13 trustee, and the debtors themselves, and failed to serve any creditors, as required by Fed. R. Bankr. P. 2002(b). Fifth, the moving parties failed to serve the United States Trustee, instead stating in the proof of service that the "documents [were] transmitted to the United States Trustee Automatically by the Court," whereas this court's local rules do not permit service by reliance on the court's transmission facilities. See Fed. R. Civ. P. 5(b)(3), authorizing service via the court's transmission facilities only where authorized by local rule; see LBR 7005-1(d), not authorizing service by such means.

Sixth, the plan provides for a claim of Midland Funding, secured by a judgment lien, in the amount of \$0, whereas the debtors have failed to obtain an order valuing the collateral securing that claim at \$0, as required by LBR 3015-1(j). Seventh, feasibility of the plan depends on the debtors' monthly net income as shown on an amended Schedule J that was not filed under cover of an amendment cover sheet, EDC Form 2-015 (Rev. 11/11), and was not otherwise verified, as required by Fed. R. Bankr. P. 1008. As a result, there is insufficient evidence in the record that the plan is feasible. Eighth, the proofs of service are signed under penalty of perjury as being "true and correct to the best of my knowledge and belief," which is a qualification meaning only that, so far as the declarant knows, the documents were served. The statement is not evidence that the declarant knows, of her personal knowledge, that the documents were served on the date and in the manner stated.

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

6. 10-94415-D-13 JOHN/GAYLE SMITH  
JDP-1

MOTION TO VALUE COLLATERAL OF  
CITIBANK, N.A.  
8-6-13 [80]

**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.

7. 10-90123-D-13 CHRISTOPHER/MONIQUE  
CJY-1 MARTIN

MOTION TO MODIFY PLAN  
8-5-13 [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.

8. 13-91323-D-13 DANNY/MARIA RAYA  
TOG-1

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
7-24-13 [9]

**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.

9. 13-91024-D-13 BRUCE VELTHOEN  
BSH-2

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

10. 13-91024-D-13 BRUCE VELTHOEN MOTION TO CONFIRM PLAN  
BSH-3 7-18-13 [32]

**Final ruling:**

Motion withdrawn by moving party on August 28, 2013. Matter removed from calendar.

11. 13-91324-D-13 MANUEL/GUADALUPE MARTINEZ MOTION TO VALUE COLLATERAL OF  
TOG-1 WESTAMERICA BANK, N.A.  
7-31-13 [8]

**Final ruling:**

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

12. 13-90134-D-13 ROBERT/CATHLEEN MOTION TO CONFIRM PLAN  
DN-3 WIERZBOWSKI 7-31-13 [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.

13. 09-90936-D-13 ROBERT/JOSIE ALVAREZ MOTION TO AVOID LIEN OF CAPITAL  
DN-7 ONE BANK  
7-23-13 [86]

**Final ruling:**

This is the debtors' motion to avoid a judicial lien allegedly held by Capital One Bank (the "Bank"). The motion will be denied for the following reasons. First, the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank (1) by first-class mail to the attention of an officer, managing or general agent, or agent for service of process; and (2) by first-class mail to the attorneys who obtained the Bank's abstract of judgment. The first method was insufficient because the rule requires service on an FDIC-insured institution, such as the Bank, by certified mail to the attention of an officer, and only an officer, not to the attention of a managing or general agent or an agent for service of process. The

second method was insufficient because the attorneys have not appeared in this case on behalf of the Bank, and thus, the exception of subd. (1) of Rule 7004(h), allowing service on a bank's attorneys, is not applicable here.

Second, the moving parties filed as an exhibit only the first page of the Bank's abstract of judgment - the title page for recording purposes - which does not state the name of the judgment creditor, the amount of the judgment, or the date the judgment was entered. As such, the moving parties have failed to establish a sufficient evidentiary basis for the motion.

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

14.	11-93138-D-13	JAMES/CATHY ALES	MOTION TO MODIFY PLAN
	MLP-3		8-2-13 [61]

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.	13-91038-D-13	FARHAD SHAHIDI AND	MOTION TO VALUE COLLATERAL AND
	RAS-1	JENNIFER BLACKNEY	TO AVOID LIEN OF ROUNDPOINT
			MORTGAGE
			7-12-13 [20]

Final ruling:

This is the debtors' motion to "value and avoid" a junior lien held by Roundpoint Mortgage. The motion will be denied because the relief requested goes beyond the type of relief that is properly granted on a motion, as opposed to by way of an adversary proceeding, and beyond the type of relief this court grants in ruling on a motion to value collateral. Specifically, the motion is a hybrid of a motion to value collateral and a motion to avoid a lien.

These forms of relief are not appropriately granted in a single motion, and the court will not in any event avoid a lien based on a lack of value in the creditor's collateral until after a debtor has completed a chapter 13 plan and received a chapter 13 discharge. Here, the moving parties request not only that the court value Roundpoint's secured claim at \$0, but an order (1) determining that said lien cannot be enforced; (2) voiding, cancelling, and extinguishing the junior lien claim and junior deed of trust held by Roundpoint and ordering that Roundpoint shall promptly deliver to the debtors a full reconveyance in proper form for recording; and (3) that the order be binding upon all of Roundpoint's assignees, transferees, and any other successors in interest.

Because the moving parties have improperly intermingled a motion to value collateral with a motion to avoid a lien, and because the relief requested goes well beyond the type of relief that can be granted without an adversary proceeding, the motion will be denied by minute order. No appearance is necessary.

16. 13-91038-D-13 FARHAD SHAHIDI AND  
RAS-2 JENNIFER BLACKNEY

MOTION TO CONFIRM PLAN  
7-24-13 [27]

**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 proof of service is not signed under oath, as required by 28 U.S.C. § 1746; and (2) the plan provides for the secured claims of Roundpoint Mortgage and Valley First Credit Union at less than the full amounts of their claims, whereas the debtors have failed to obtain orders valuing the collateral securing those claims, as required by LBR 3015-1(j).

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

17. 13-90846-D-13 DEBORAH BAZAN  
TOG-2

MOTION TO CONFIRM PLAN  
7-26-13 [36]

18. 13-91446-D-13 CHERYL GUILLES  
BSH-1

MOTION TO VALUE COLLATERAL OF  
GREEN TREE SERVICING, LLC  
8-6-13 [8]

**Final ruling:**

This is the debtor's motion to value collateral of Green Tree Servicing, LLC ("Green Tree"). The motion will be denied for the following reasons. First, the moving party failed to serve Green Tree in compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Green Tree by certified mail at a street address with no attention line, which was incorrect for two reasons. The rule provides that service on a corporation or other unincorporated association must be to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there was no attention line. The first line of the motion is "To Officer, General Manager, or Agent for Service of Process for Green Tree Servicing LLC." However, that is not the equivalent of service of process as so addressed. (The rule requires that if service is made by mail, it must be made "by mailing a copy . . . to the attention of" an officer, managing or general agent, or agent for service of process.) In addition, 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.

Second, the moving papers do not clearly identify the target of the motion as Green Tree and do not clearly state the nature of the relief requested. The first line of the motion, as quoted above, mentions Green Tree, but Green Tree is not mentioned anywhere else in the motion, and it is not named at all in the notice of hearing. Further, the notice of hearing describes the relief requested merely as "an order valuing collateral - primary residence." The motion states that the debtor owes \$168,902 on the first deed of trust and values the property at \$138,012, and then states, "Estimated deficiency balance is to be allowed as a general unsecured claim." The logical implication of this language is that the deficiency balance that is to be allowed as a general unsecured claim is the deficiency balance on the first, \$30,890, whereas what the debtor really seeks is an order setting the amount of the claim secured by the second deed of trust at \$0.

Finally, the proof of service, unlike the motion, notice of hearing, and declaration, does not bear evidence of signature in the manner required by LBR 9004-1(c)(1)(B)(iii). Signatures on the motion, notice of hearing, and declaration are all indicated by "/s/ Name," as required by the rule; the signature line on the proof of service is indicated only by "/s/."

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

19. 13-91446-D-13 CHERYL GUILLES  
BSH-2

MOTION TO VALUE COLLATERAL OF  
GREEN TREE SERVICING, LLC  
8-6-13 [12]

**Final ruling:**

This is the debtor's motion to value collateral. The motion will be denied for the following reasons. First, the motion and notice of hearing are identical to those in DC No. BSH-1, also on this calendar, except for the docket control number. Thus, for the reasons set forth in the court's ruling on that motion, they are defective for failure to clearly state the nature of the relief requested.

However, the debtor's declaration in support of the motion adds the following to the language in her declaration supporting DC No. BSH-1: "There was also [at the time of filing] a judicial lien in third position based on a judgment entered on January 13, 2012 in the amount of \$5,598.90." This is the only mention of a judicial lien; however, since it is the only thing that distinguishes this motion from DC No. BSH-1, the court assumes what the debtor is actually seeking with this motion is an order setting the amount of the claim secured by the judgment lien at \$0. Assuming that is the case, there are additional problems. None of the moving papers mentions the name of the holder of the judgment lien. The first line of the motion is the same as in DC No. BSH-1: "To Officer, General Manager, or Agent for Service of Process for Green Tree Servicing LLC." However, according to the debtor's Schedule D, the holder of the judicial lien is Capital One Bank, not Green Tree. Capital One Bank is not mentioned anywhere in the moving papers, and the



moving party attempted to serve only Green Tree (albeit incorrectly, as discussed in the ruling on DC No. BSH-1), not Capital One Bank.

Finally, the proof of service, unlike the motion, notice of hearing, and declaration, does not bear evidence of signature in the manner required by LBR 9004-1(c)(1)(B)(iii). Signatures on the motion, notice of hearing, and declaration are all indicated by "/s/ Name," as required by the rule; the signature line on the proof of service is indicated only by "/s/."

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

20.	12-90147-D-13	ANTHONY/DEBBIE GIRETTO	MOTION TO MODIFY PLAN
	JAD-5		7-26-13 [66]

**Final ruling:**

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

21.	13-90847-D-13	ALBERT BENTO	MOTION TO CONFIRM PLAN
	TOG-2		7-30-13 [21]

22.	11-92649-D-13	HUMBERTO/MARTHA MORENO	MOTION FOR RELIEF FROM
	NLG-1		AUTOMATIC STAY
	FEDERAL NATIONAL MORTGAGE		7-30-13 [43]
	ASSOCIATION VS.		

**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.

Tentative ruling:

This is the motion of Michael D. McGranahan, the former chapter 7 trustee in this case (the "trustee") for an order vacating the court's order dated July 26, 2013 (the "July 26, 2013 order") by which this case was converted, on the debtors' ex parte motion, from chapter 7 to chapter 13. The debtors have not filed opposition. For the following reasons, the motion will be granted, and the July 26, 2013 order will be vacated.

First, the debtors filed their ex parte motion to convert the case without, apparently, serving anyone (there is no proof of service on file), whereas pursuant to Fed. R. Bankr. P. 2002(a)(4), they were required to give the trustee and all creditors at least 21 days' notice of a hearing on their motion. Second, the trustee has testified under oath, and the debtors have not refuted, that the debtors filed their ex parte motion - again, without serving the trustee - five days after the trustee had e-mailed the debtors' attorney advising him that he would oppose any motion to convert as being in bad faith. The court considers this fact to be evidence of bad faith justifying vacating the July 26, 2013 order.

Third, the evidence submitted by the trustee with this motion provides a strong indication that the debtors significantly undervalued their real property assets on their chapter 7 schedules filed in this case. For example, the debtors described their property at 11243 Merced Court, Turlock, California, as a "residence" and a "home," and listed its value at \$380,000, with liens of \$349,234, leaving equity of \$30,766. They described their interest in the home as a one-half interest, which they valued at \$15,383. By contrast, the trustee discovered at the meeting of creditors that the property is a 30-acre parcel, and includes a 24-acre almond orchard (with eight-year old trees), a 2,000 square foot residence, a small vineyard, and several pre-fabricated buildings. It is the trustee's opinion that the almond orchard alone is worth at least \$480,000; the vineyard, \$90,000; and the residence, \$150,000, such that, excluding the pre-fabricated buildings, the property is worth at least \$720,000. At this value, with liens totaling \$349,234, there would be \$370,766 in equity in the property, not \$30,766, as the debtors' Schedule A indicates. The debtors also listed on their Schedule A a vacant lot in Turlock, whereas the trustee has determined from the public records that they actually own three adjacent vacant lots.

Fourth, the July 26, 2013 order expressly required the debtors to file a chapter 13 plan within 15 days from the date of the order. To date, over six weeks from the date of the order, the debtors still have not filed a plan.

Because notice of the motion to convert the case was not properly given, the July 26, 2013 order should not have been entered. Further, in light of the trustee's evidence described above, the court concludes that the debtors provided inaccurate and misleading information on their Schedule A, and that they have thereby "forfeited [their] right to proceed under Chapter 13." Marrama v. Citizens Bank, 549 U.S. 365, 371 (2007). Finally, as the debtors have failed to file a chapter 13 plan, the court concludes they do not intend to proceed with the case in chapter 13.

For the reasons stated, the motion will be granted, and the July 26, 2013 order will be vacated. The court will hear the matter.

24. 13-90950-D-13 FEDERICO/ILENE RUEZGA MOTION TO EXTEND DEADLINE TO  
MDM-2 FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR  
8-2-13 [31]
25. 13-91153-D-13 DENNIS/LORETTA BLOYED OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
8-9-13 [22]
26. 12-92655-D-13 JOE/KAREN TERRA MOTION TO MODIFY PLAN  
CJY-3 7-31-13 [31]

**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.

27. 13-91157-D-13 MARTIN PRICE OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
8-9-13 [26]

28. 13-90859-D-13 CHARLES FOSTER  
TRM-106  
FINANCIAL SERVICES VEHICLE  
TRUST VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY,  
MOTION FOR ADEQUATE PROTECTION  
8-12-13 [26]

**Final ruling:**

This matter is resolved without oral argument. This is Financial Services Vehicle Trust's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject lease and the moving party's interest in the property is not adequately protected. Accordingly, the court finds there is cause for granting relief from stay as to the debtor and any co-debtor. The court will grant relief from stay as to the debtor and any co-debtor by minute order. There will be no further relief afforded. No appearance is necessary.

29. 08-91570-D-13 ISRAEL MAR AND VERONICA  
JDP-1 TOVAR

MOTION TO VALUE COLLATERAL OF  
CIT BANK  
8-7-13 [74]

**Final ruling:**

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

30. 13-90270-D-13 JAIME RIVERA  
YG-4

MOTION TO VALUE COLLATERAL OF  
RON RESH  
8-1-13 [85]

**Final ruling:**

This case was dismissed on August 22, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

31. 13-91372-D-13 TODD/ROSIE JONES  
PLG-2

MOTION TO VALUE COLLATERAL OF  
CPS AUTO FINANCE  
8-7-13 [12]

**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.

32. 10-90177-D-13 EDWARD/JENNIFER WATSON MOTION TO MODIFY PLAN  
DN-1 7-31-13 [97]

**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. 09-92780-D-13 GARY/JENNIFER WEESE MOTION TO MODIFY PLAN  
CJY-3 8-6-13 [72]

**Final ruling:**

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

34. 13-91180-D-13 STEVEN/KRISTI LOGAN OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
8-9-13 [14]

35. 13-90581-D-13 JOHN/BARBARA GEORGE MOTION TO CONFIRM PLAN  
MDA-2 7-14-13 [31]

36. 10-92783-D-13 JAMES/ANGELA WATSON  
TPH-5

CONTINUED MOTION TO INCUR DEBT  
AND/OR MOTION TO APPROVE LOAN  
MODIFICATION  
7-8-13 [70]

37. 10-92783-D-13 JAMES/ANGELA WATSON  
TPH-6

MOTION TO MODIFY PLAN  
7-31-13 [78]

**Tentative ruling:**

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

On July 8, 2013, the debtors filed a motion for approval of a mortgage loan modification that would save them at least \$627 per month on their mortgage payment.<sup>1</sup> The debtors did not propose a modified plan to share any portion of the mortgage savings with their creditors. The court issued a tentative ruling for the July 23, 2013 hearing on that motion, expressing its concern about that fact, and also its concern that the debtors had not proposed a modified plan to increase the dividend after actual claims filed in the case came in much lower than the debtors had estimated - \$37,404 as opposed to \$355,381. The court continued the hearing on the loan modification motion to allow the debtors to file a motion to modify their plan. The debtors then filed this motion on July 31, 2013; they filed amended Schedules I and J and an amended Form 22C the same day.

The trustee opposed this motion on the ground that the plan was not proposed in good faith. He pointed out that whereas the debtors had described the reason for the modified plan as a decrease in debtor James Watson's income, the debtors' amended Schedule I actually shows an increase in his income -- \$1,120 per month higher than on their original Schedule I. Thus, between the increased income and the reduced mortgage payment, it appeared the debtors now had \$1,747 more per month (minus, presumably, \$302 for property taxes and insurance), whereas they were proposing to increase their plan payment by only \$209 per month.

The debtors respond that their original and amended Forms 22C reflect their financial situation more accurately than their Schedules I. Their original Form 22C showed Mr. Watson's current monthly income (for the six months prior to the filing) as \$11,135. The debtors filed an amended Form 22C with this motion which, according to their response to the trustee's opposition, shows Mr. Watson's average monthly income for the past six months as \$9,856. Thus, the Forms 22C reflect a reduction of \$1,279 since the case was commenced, as opposed to the \$1,120 increase shown by the original and amended Schedules I.

In fact, the debtors' original Schedules I and J did not support their original plan payment. Those schedules showed monthly net income of negative \$725, whereas

the debtors' confirmed plan calls for a plan payment of \$741. The debtors were apparently able to remain current with their plan payments only by borrowing, in June of 2012, over a year ago, an additional \$12,000 from Mr. Watson's 457 plan. Thus, whereas they had been paying \$579 on an existing 457 loan at the beginning of the case, they are now paying \$1,197 per month on the increased loan. The debtors did not seek court approval to incur that new debt until this month, after the trustee opposed the present motion on the ground that they had, without explanation, apparently increased the amount being paid on the 457 loan. (A hearing on the motion to incur debt (retroactively) is set for September 24, 2013.)

The \$618 increase in the debtors' monthly payment on the 457 loan seriously impacts their ability to pay their other creditors through the plan, and the court questions how the new plan, with a slightly increased plan payment and the significant increase in the 457 loan repayment, will be feasible when the original plan was not. (Although the debtors have specifically accounted for the disposition of only \$6,000 of the \$12,000 they borrowed, they have said the remaining \$6,000 went to help them make ends meet each month, and that money is now entirely gone.) In short, the debtors have been unable to get by without additional borrowing; they have failed to explain how they will be able to get by in the future without still more borrowing, and the court is unable to conclude that the new plan is feasible.

On a separate issue, the court noted in its tentative ruling on the loan modification motion that the debtors had originally estimated their general unsecured debt at \$355,381, whereas actual filed general unsecured claims total only \$37,404. This large discrepancy would presumably affect the dividend to be paid to the creditors who filed those claims, yet the debtors had never sought to modify the plan to increase the dividend based on the much smaller amount of claims filed. The debtors state in this motion that they have calculated the dividend under the proposed modified plan based on unsecured claims of \$37,404 plus \$84,978, which is the amount of Charter One's second mortgage claim the court has previously valued at \$0.

The court questions, however, whether Charter One's failure to file a timely proof of claim (it has never filed a claim) affects its right to a distribution under the plan, and thus, whether the \$84,978 should be counted in calculating the dividend. Both the debtors' confirmed plan and the proposed modified plan provide that a claim, including a secured claim, will not be paid pursuant to the plan unless a timely proof of claim is filed by or on behalf of a creditor. (Confirmed plan, DN 15, sec. 3.01; modified plan, DN 82, sec. 2.01.) The debtors' counsel should be prepared to address this issue; the court will also hear from the trustee's counsel.

To conclude, the court is unable to conclude that the modified plan is feasible. Finally, the court agrees with the trustee that the debtors may not adjust downward the rate of interest being paid on the secured claim of Wells Fargo Dealer Services. See 11 U.S.C. § 1327(a). In their response, the debtors agree they will increase the interest rate to the rate applicable under the confirmed plan; this will, however, reduce the dividend to general unsecured creditors from the 22% they were noticed of to 20%.

The court will hear the matter.

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<sup>1</sup> The trustee refers to savings of \$929 per month; however, the court believes that figure does not take into account the \$302 escrow payment referred to in the loan documents filed with the motion to approve the loan modification, DN 72, page 2

of the debtors' Ex. A. The escrow payment is expressly stated to be in addition to the monthly payment of principal and interest as stated in section 2 of the loan modification agreement, \$1,711. The court notes that the debtors have failed to include the escrow payment - or separate payments for taxes and insurance - on their amended Schedule J. This discrepancy will need to be resolved.

38. 12-91983-D-13 DEEPESH/KRISTEN CHAND MOTION TO MODIFY PLAN  
CJY-3 8-1-13 [40]  
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. 11-90287-D-13 ROBERT/JOYCE PALMAYMESA MOTION TO MODIFY PLAN  
BPC-2 8-7-13 [63]

40. 13-90791-D-13 MARTIN/GLORIA WORMUTH MOTION TO CONFIRM PLAN  
TOG-2 7-20-13 [44]

Tentative ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The trustee has filed opposition on the grounds that (1) the debtors' Schedules I and J do not show sufficient monthly net income to fund the plan payments; and (2) the plan appears to call for 61 monthly plan payments, rather than 60. The latter problem can be probably resolved in the order confirming the plan. As to the former problem, the debtors have, apparently in response to the trustee's opposition, filed an amended Schedule J, and on September 3, 2013, a supporting declaration explaining the reductions they have reported in several of their expenses. The court will hear from the trustee on this point.

However, there is a preliminary problem the debtors will need to address. The proof of service of the motion and supporting documents, DN 49, states that the motion and other documents were served on the chapter 13 trustee, the United States Trustee, the parties requesting special notice, and the "attached creditors." However, there is no list of creditors attached to the proof of service. The debtors filed an amended proof of service, DN 50, apparently to correct this problem. The amended proof of service has the creditor list attached, but it evidences service of the amended proof of service itself, and not the motion, notice of hearing, or the amended plan. The debtors will need to file a corrected proof of service before this motion will be granted.

The court will hear the matter.



41. 13-90994-E-7 RONALD/PATRICIA NELSON MOTION TO CONFIRM PLAN  
BSH-2 7-22-13 [21]

**Final ruling:**

This case was converted to a Chapter 7 on August 27, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

42. 13-90994-E-7 RONALD/PATRICIA NELSON MOTION TO SET PROPERTY VALUE  
BSH-3 7-22-13 [26]  
CASE CONVERTED TO CH. 7 ON  
8/27/13

**Final ruling:**

This case was converted to a Chapter 7 on August 27, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

43. 13-90994-E-7 RONALD/PATRICIA NELSON MOTION TO SET PROPERTY VALUE  
BSH-4 7-22-13 [30]

CASE CONVERTED TO CH. 7 ON  
8/27/13

**Final ruling:**

This case was converted to a Chapter 7 on August 27, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

44. 12-92098-D-13 DAVID/VIOLA HOHU MOTION TO MODIFY PLAN  
BSH-5 7-19-13 [70]

**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.

45. 13-90604-D-13 SERGIO/LORENA CHAVEZ  
DWE-2  
EAST WEST BANK VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-19-13 [66]

46. 12-92144-D-13 JOSEPH/ELIZABETH CLAUSE  
MLP-4

MOTION TO VALUE COLLATERAL OF  
QUANTUM3  
8-23-13 [50]

47. 08-91078-D-13 WAYNE/SHAWN DONAHUE  
JDP-1

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

**Final ruling:**

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

48. 13-90581-D-13 JOHN/BARBARA GEORGE  
MDA-4

MOTION TO VALUE COLLATERAL OF  
PNC BANK  
8-26-13 [53]