

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

JANUARY 5, 2016 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.	15-91100-D-13	CHRIS MACDONALD	MOTION TO VALUE COLLATERAL OF
	BSH-1		RIVER CITY BANK
			12-7-15 [14]

Final ruling:

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

2. 15-91100-D-13 CHRIS MACDONALD MOTION TO VALUE COLLATERAL OF
BSH-2 CAPITAL ONE BANK (USA), N.A.
12-7-15 [19]

Final ruling:

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

3. 15-90402-D-13 FILEMON BANUELOS AND MOTION TO CONFIRM PLAN
TOG-4 ESPERANZA BANLELOS 11-4-15 [71]

Final ruling:

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

4. 12-92505-D-13 DOLORES THOMPSON MOTION TO MODIFY PLAN
DEF-9 11-4-15 [152]

5. 15-90206-D-13 KATRINA CHANDLER MOTION TO CONFIRM PLAN
SJS-3 11-9-15 [79]

Final ruling:

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

6. 12-92611-D-13 MICHAEL/KERRY COBB MOTION TO MODIFY PLAN
MSN-1 11-14-15 [49]

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.

7. 13-90011-D-13 PAULINE MORIN MOTION FOR COMPENSATION FOR
PGM-4 PETER G. MACALUSO, DEBTOR'S
ATTORNEY
11-30-15 [72]

8. 15-90828-D-13 DAVID GOMEZ MOTION TO CONFIRM PLAN
DEF-2 10-23-15 [32]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because, of the five creditors who had filed claims as of the date the motion was served, the moving party failed to serve four of them at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g), and failed to serve two of them at all, and thus, did not comply with Fed. R. Bankr. P. 2002(b).

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

9. 15-90335-D-13 SANDRA NARANJO MOTION TO CONFIRM PLAN
PGM-2 11-24-15 [63]

10. 15-91037-D-13 TODD/ROSIE JONES
PLG-2

MOTION TO VALUE COLLATERAL OF
CPS AUTO FINANCE
12-7-15 [26]

Final ruling:

The debtor filed a motion to value collateral (an automobile) under § 506 of the Bankruptcy Code. The method for valuation pursuant to this code section is replacement value, which is defined as "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time the value is determined." (See § 506(a)(2).) In the only evidence submitted by the debtors they offer testimony only as to the "trade-in" value for the vehicle. As a result the motion will be denied by minute order. No appearance is necessary.

11. 15-90943-D-13 ANNE GAGNON
PGM-1

MOTION TO VALUE COLLATERAL OF
ALLY BANK
11-23-15 [19]

Final ruling:

This is the debtor's motion to value the collateral of Ally Bank (the "Bank"), a 2010 Hyundai Genesis, at \$10,000. The Bank filed opposition and the debtor filed a reply. The parties have since filed a stipulation pursuant to which they have agreed that the value of the vehicle to be provided for through the debtor's plan will be \$12,037.50. The stipulation states that "[s]ubject to the terms and conditions of this Stipulation, Secured Creditor hereby withdraws its Opposition to the Debtor's Motion to Value Collateral filed on December 24, 2015." Thus, the court will grant the motion in part and value the vehicle and the Bank's secured claim at \$12,037.50. Moving party is to submit an order which provides that the Bank's secured claim is \$12,037.50. The parties are also to submit a proposed order approving the stipulation. No appearance is necessary.

12. 15-90946-D-13 DAVID/CAROL TRUAX
CJY-2

MOTION TO VALUE COLLATERAL OF
DITECH FINANCIAL, LLC
12-2-15 [31]

Final ruling:

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

13. 10-93449-D-13 ROSALIND TUCKER MOTION TO VALUE COLLATERAL OF
CJY-5 OCWEN LOAN SERVICING, LLC
12-2-15 [114]

Final ruling:

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

14. 15-90351-D-13 HENRY PEREZ MOTION TO VALUE COLLATERAL OF
BSH-4 INTERNAL REVENUE SERVICE
12-7-15 [38]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

15. 15-90855-D-13 PHILLIP/NECY LOPEZ CONTINUED OBJECTION TO
AP-1 CONFIRMATION OF PLAN BY
DEUTSCHE BANK NATIONAL TRUST
COMPANY
10-26-15 [22]

16. 10-95062-D-13 JOVY BERINGUELA AND OBJECTION TO NOTICE OF MORTGAGE
CJY-1 CARMELA TACBAD PAYMENT CHANGE
11-6-15 [107]

Tentative ruling:

This is the debtors' objection to a Notice of Mortgage Payment Change filed July 20, 2015 (the "7/20/15 Notice") by Wells Fargo Home Mortgage. HSBC Bank USA (the "Bank") has filed opposition.¹ For the following reasons, the court intends to continue the hearing and permit the parties to supplement the record.

The court will begin with the observation that both the debtors' objection and the Bank's opposition consist solely of conclusions drawn by the parties' attorneys about the information contained in the 7/20/2015 Notice and an earlier Notice of Mortgage Payment Change, filed June 10, 2014 (the "6/10/14 Notice"). Neither side has submitted any admissible evidence.² Thus, the court is left to draw its own conclusions.

The 7/20/15 Notice stated that the escrow portion of the mortgage payment was being increased from \$450.71 to \$520.61 beginning September 1, 2015. The debtors object that the Notice "provides no reasoning to necessitate the increase in the escrow payment." Debtors' Obj., filed Nov. 6, 2015 ("Obj."), at 1:27-28. That is not entirely accurate. Attached to the Notice is an escrow analysis that shows that (1) the escrow portion of the mortgage payment between July 2014 and June 2015 was \$450.71 per month, which covered property taxes and insurance premiums totaling \$5,408.56; and (2) the escrow portion between July 2015 and June 2016 would be \$520.61, to cover taxes and insurance totaling \$6,247.36. The monthly amounts, \$450.71 and \$520.61, are arrived at simply by dividing the totals of tax and insurance payments by 12.

The debtors have three more specific complaints about the 7/20/15 Notice. The first two do not, in the court's view, require or warrant judicial intervention. First, the debtors complain that the first page of the notice shows the old escrow payment as \$450.71 whereas attachments to the notice show it as \$429.23. In the debtors' view, these numbers should be the same throughout, and therefore, "Debtors believe that the attachments to the July 20th Notice should reflect that the escrow payment since June 10, 2014 was \$450.71 and not \$429.23." Obj. at 2:8-10. In the same vein, the debtors note that the attachments to the 7/20/15 Notice show the old mortgage payment as \$1,711.46 whereas the 6/10/14 Notice showed the new mortgage payment as \$1,449.30.

The Bank's explanation is that the loan is contractually due for May 1, 2014, and in fact, those figures appear to have been carried over from an April 8, 2014 escrow analysis, the one attached to the 6/10/14 Notice. In any event, however, neither party disputes that, prior to the issuance of the 7/20/15 Notice, the old mortgage payment was \$1,449.30 and the old escrow payment was \$450.71. Thus, the court will grant no relief in regard to those two of the debtors' complaints.

The debtors' third complaint may have more merit, although the court cannot be certain based on the present record. The debtors contend there is no reason for the escrow payment to increase from \$450.71 to \$520.61. They point to the escrow analysis attached to the 7/20/15 Notice - the one projected for July 2015 through June 2016 - and assert:

The starting point of that escrow analysis shows that Claimant projects an available starting escrow balance of \$5,704.39. That means, Claimant is already holding that amount of money in the escrow account. The analysis goes on to show that if the Debtors pay \$520.61 per month towards escrow as Claimant has requested, there will be a surplus of \$5,704.35 at the end of June 2016.

Obj. at 2:23-27. The Bank, in turn, explains the surplus as follows:

Examination of the escrow history attached to the July 2015 Payment

Change Notice indicates that the escrow account balance drops to (\$1,129.87) in March 2015. An escrow adjustment of \$5,932.84 is added to the Loan in May 2015, to bring the escrow account balance to \$4,802.97. This adjustment is done so that escrow amounts contained in Respondent's Proof of Claim are not collected from the Debtors post petition. Accordingly, the 'surplus' referenced by the Debtors does not indicate that escrow payments should be lowered.

Bank's Opposition, filed Dec. 22, 2015, at 4:15-21.

Even if this explanation had been supported by admissible evidence, the court would find it unenlightening. The <\$1,129.87> and \$5,932.84 figures are taken from the historical portion of the 7/20/15 escrow analysis - the one for the period July 2014 through June 2015 - and they are taken from the "Actual" columns in that analysis. Thus, they appear to demonstrate that the actual amount in the debtors' escrow account dropped to a negative \$1,129.87 in March of 2015, after the Bank paid the property tax installment, and that an "actual" payment of \$5,932.84 was made to the escrow account in April of 2015, bringing the "actual" balance back up to \$4,802.97. After the debtors' next two escrow payments of \$450.71 each, the actual balance in the escrow account was \$5,704.39, as claimed by the debtors. The Bank refers to the \$5,932.84 figure as an "escrow adjustment" done so that escrow amounts contained in the Bank's proof of claim (presumably, pre-petition arrears) are not collected post-petition.

The court cannot make heads or tails of this explanation. Where did the \$5,932.84 come from? Was it a lump-sum payment made by the debtors, as suggested by the fact that it is shown as an "actual" payment to escrow? Or did it reflect some sort of internal accounting transfer by the Bank? The court suspects the latter is the case because if the debtors did make a lump-sum payment of \$5,932.84 into the escrow account in April of 2015, (1) they would likely have made that point in their objection; and (2) the trustee would likely have questions about disposable income. However, without sufficient evidence from either party, the court can make no determinations of fact.

The court will give the parties an opportunity to supplement the record - and by this, the court means by way of admissible evidence sufficient in detail to enable the court to properly assess the escrow analysis, not simply more speculation by the parties' attorneys. The court will hear the matter.

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- 1 The 7/20/15 Notice named the "creditor" as HSBC Bank USA, as trustee, on page 1; it was signed by a "VP Loan Documentation" for Wells Fargo Home Mortgage, named as the "creditor" on page 2. The court is not aware of the relationship between HSBC Bank USA and Wells Fargo Home Mortgage with respect to the debtors' loan; however, neither party has raised the issue.
 - 2 The Bank submitted its copies of the notices under cover of a Request for Judicial Notice, stating that the court may take judicial notice of them "because they are matters of public record." Bank's Request for Judicial Notice, filed Dec. 22, 2015, at 2:19-20. This reflects an all-too-common misunderstanding of judicial notice. In fact, "[t]he Court can judicially notice what has been filed in the Court docket, but that does not mean that the Court can judicially notice the truth of the facts asserted in the documents filed in the court record, including pleadings and affidavits. The Court will not take judicial notice of hearsay allegations merely because they are part of

the court file." In re Wilson, 2007 Bankr. LEXIS 359, *64 (Bankr. D. Mont. 2007), citing Russell, BANKRUPTCY EVIDENCE MANUAL, 2004 ed., § 201.5.

Generally, statements contained in documents filed in the public record must be otherwise admissible under the Federal Rules of Evidence. See Wetherbee v. Willow Lane, Inc. (In re Bestway Prods.), 151 B.R. 530, 541 (Bankr. E.D. Cal. 1993). Here, the court may take judicial notice that the notices of mortgage payment change appear in the court record and judicial notice of the dates they were filed. The notices, however, are hearsay and have not been properly authenticated, and thus, the court has no basis on which to conclude that they are accurate.

17. 15-90262-D-13 ERIC/REBECCA BURKE MOTION TO MODIFY PLAN
CJY-3 11-19-15 [35]

18. 10-94363-D-13 MICHAEL MOSLEY AND MOTION TO MODIFY PLAN
CJY-1 JACQUELINE NEAL-MOSLEY 11-11-15 [107]

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. 15-90869-D-13 LEONARDO/MELISSA JOSEF MOTION TO VALUE COLLATERAL OF
PLG-1 ONE MAIN FINANCIAL
12-4-15 [24]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

20. 15-91170-D-13 MONIQUE PULIDO
CJY-1

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER, USA
12-4-15 [8]

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.

21. 15-90871-D-13 WILSON/AVELAIN SARHAD
DCJ-3

MOTION TO CONFIRM PLAN
11-24-15 [48]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for two reasons. First, the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). When the debtors filed their schedules in this case, pursuant to an order extending time, they included two creditors that had not been included on their master address list, filed when the case was filed - AAA Insurance and American Medical Response in Modesto. And although they filed an amendment to their master address list, they did not include those two creditors. As a result, when the debtors utilized the PACER matrix for service of this motion, they failed to serve those two creditors.

In addition, the plan provides for the secured claim of Leonani Garcia at far less than the full amount of her claim, whereas the debtors have failed to obtain an order valuing the collateral securing the claim, as required by LBR 3015-1(j).

For the reasons stated, the motion will be denied and the court need not reach the oppositions filed by Leonani Garcia and the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

22. 15-90871-D-13 WILSON/AVELAIN SARHAD
MRD-1

OBJECTION TO DEBTORS' CLAIM OF
EXEMPTIONS
11-20-15 [45]

Final ruling:

This is the objection of creditor Leonani Garcia (the "creditor") to the debtors' claims of exemption in their residence and tools of the trade. The debtors have not filed opposition. For the following reasons, the objection will be sustained.

This department agrees with two other departments of this court that have recently held that for exemptions claimed under California exemption law, as are the debtors' claims of exemption in this case, the burden of proof is on the debtor. See

In re Tallerico, 532 B.R. 774, 788 (Bankr. E.D. Cal. June 30, 2015); In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. June 8, 2015); see also In re Barnes, 275 B.R. 889, 899, n.2 (Bankr. E.D. Cal. 2002); cf. Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (9th Cir. BAP 2010); In re Gomez, 530 B.R. 751, 754 (Bankr. E.D. Cal. May 5, 2015); In re Dunnaway, 466 B.R. 515, 520 (Bankr. E.D. Cal. 2012). Further, although § 522(1) creates what has been referred to as "a form of presumption in favor of claimed exemptions" (Tallerico, 532 B.R. at 782), that presumption is rebutted by nothing more than the mere filing of an objection to exemption. Id. Section 522(1) is also viewed as creating a burden of production, which, however, is satisfied by the mere filing of an objection to exemption, which, in turn, shifts the burden of production to the debtor. Id. at 790.

The debtors have claimed a \$175,000 exemption in their residence under Cal. Code Civ. Proc. § 704.950. The creditor contends the code section is improper as it exempts judgment liens on real property. That is not accurate, but in any event, the code section does not provide an exemption for the debtors' residence. Section 704.950 is not an exemption statute: it describes the circumstances under which a declared homestead is protected from the attachment of a judgment lien.¹ Thus, the debtors' claim of exemption is, on its face, subject to disallowance.

The debtors have also claimed exemptions totaling \$15,250 under Cal. Code Civ. Proc. § 704.060 (tools of the trade). The creditor incorrectly cites the limit under that code section as \$6,075: the limit for the debtor and joint debtor, who according to their Schedule I, both earn a livelihood from operation of the same business, is doubled, for a total of \$12,150. See § 704.060(a)(3). The debtors' exemptions, however, exceed that amount - by \$3,100. It is not the court's role to determine which of the particular items claimed as exempt would be appropriately claimed within the limited amount; thus, all the § 704.060 exemptions must be disallowed.

The court rejects the creditor's final two arguments. First, the creditor suggests the values of the three tow trucks are higher than as scheduled by the debtors. The accuracy of a debtor's valuations is not generally at issue in an objection to exemptions; instead, the question is whether the debtor is entitled to exemptions in the amounts claimed. If the assets are actually worth more, the excess, if any, over and above the amounts properly claimed as exempt, is non-exempt property of the estate. Second, the creditor contends the debtors' apparent conversion of their corporation into a sole proprietorship on the eve of their first bankruptcy filing reflects an attempt to "hide all the corporation's assets behind their personal exemptions," and thereby to defraud the creditor. Under Law v. Siegel, 134 S. Ct. 1188, 1195-97 (2014), fraud is not a basis for disallowance of an exemption under federal law, and the creditor has not made a satisfactory showing for disallowance of the exemptions based on fraud under state law. See id. at 1196-97.

The creditor's objection alone was sufficient to rebut the presumption that the debtors' claims of exemption are valid, and therefore, sufficient to shift the burden of production to the debtors, who have the burden of proof. Further, the debtors' claim of an exemption in their residence is not made under an appropriate exemption statute, and thus, is subject to disallowance on its face, and the claims of exemption of tools of the trade, on their face, exceed the statutory maximum. For these reasons, the objection will be sustained by minute order. No appearance is necessary.

26. 15-90987-D-13 ALAN/BARBARA PAYNE OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
12-4-15 [15]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

27. 11-93491-D-13 SHAWN/WINFRED HODGES MOTION TO MODIFY PLAN
CJY-3 11-18-15 [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.

28. 11-93491-D-13 SHAWN/WINFRED HODGES MOTION TO VALUE COLLATERAL OF
CJY-4 SPECIALIZED LOAN SERVICING, LLC
11-18-15 [69]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Specialized Loan Servicing, LLC at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the 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 Specialized Loan Servicing, LLC's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

29. 14-91593-D-13 PAUL/RUTH CARROLL MOTION TO MODIFY PLAN
MSN-1 11-14-15 [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.

30. 15-91112-D-13 MATTHEW/DEBORAH HEATH MOTION TO VALUE COLLATERAL OF
CJY-1 DITECH FINANCIAL, LLC
12-18-15 [12]
31. 15-91112-D-13 MATTHEW/DEBORAH HEATH MOTION TO AVOID LIEN OF MIDLAND
CJY-2 FUNDING, LLC
12-18-15 [16]
32. 15-91112-D-13 MATTHEW/DEBORAH HEATH MOTION TO AVOID LIEN OF
CJY-3 CITIBANK, N.A.
12-18-15 [22]
33. 15-91112-D-13 MATTHEW/DEBORAH HEATH MOTION TO AVOID LIEN OF CAPITAL
CJY-4 ONE BANK (USA), N.A.
12-18-15 [28]

34. 15-91112-D-13 MATTHEW/DEBORAH HEATH MOTION TO AVOID LIEN OF
CJY-5 NATIONAL CREDIT ADJUSTERS, LLC
12-18-15 [34]
35. 11-93636-D-13 ALENE WILLIAMS MOTION TO INCUR DEBT
JCK-6 12-14-15 [96]
36. 15-91177-D-13 ARTHUR/KATHERINE MARTIN MOTION TO EXTEND AUTOMATIC STAY
DCJ-2 12-22-15 [20]

Tentative ruling:

This is the debtors' motion to extend the automatic stay pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has a concern about service of the motion on Wells Fargo Home Mortgage, whose Notices of Mortgage Payment Change in the debtors' prior case played a significant role in the debtors' inability to complete their plan in that case, according to the debtors.

The debtors served Wells Fargo at a post office box address and not at the address used by Wells Fargo on its proof of claim and request for special notice in the prior case or the address on the various Notices of Mortgage Payment Change filed in the prior case. Further, although the motion refers to a Notice of Mortgage Payment Change already filed by Wells Fargo in this case, the debtors failed to serve the motion on Wells Fargo at the address on that notice. Thus, the court finds that, so far as Wells Fargo is concerned, service of the motion was not sufficient. In addition, as to all creditors, the court finds that notice of the hearing was insufficient. The notice of hearing gives the location of the hearing as the Modesto courthouse but the motion, declaration, and exhibits all give the location as the Sacramento courthouse.

As a result of these service and notice defects, the court intends to deny the motion or continue the hearing to allow the moving parties to address these issues. The court will hear the matter.

