

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

February 11, 2014 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.	09-90300-D-13 JDP-1	RICHARD/DEBBIE LACOSTE	MOTION TO VALUE COLLATERAL OF CITIBANK, N.A. 1-7-14 [62]
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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.

2. 13-90900-D-13 CLIFF/CARMOLETTA FERRELL OBJECTION TO CLAIM OF COUNTY OF
JCK-4 SAN JOAQUIN TREASURER & TAX
COLLECTOR, CLAIM NUMBER 35
12-23-13 [50]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the debtors' objection to claim. No appearance is necessary.

3. 13-91903-D-13 GUSTAVO BARRAGAN MOTION TO CONFIRM PLAN
MLP-4 12-18-13 [38]

Final ruling:

This case was dismissed on February 4, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

4. 13-90604-D-13 SERGIO/LORENA CHAVEZ MOTION TO SELL
CJY-4 1-14-14 [82]

5. 10-94210-D-13 JOHN/JENNIFER CARREIRO MOTION TO VALUE COLLATERAL OF
JDP-1 WELLS FARGO BANK, N.A.
1-2-14 [78]

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.

6. 09-91714-D-13 RITA ROSS MOTION TO MODIFY PLAN
CJY-4 1-7-14 [100]

Final ruling:

The relief requested in the motion is supported by the record, the trustee having 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.

7. 09-91714-D-13 RITA ROSS CONTINUED MOTION FOR RELIEF
TJS-1 FROM AUTOMATIC STAY AND/OR
JPMORGAN CHASE BANK, N.A. MOTION FOR ADEQUATE PROTECTION
VS. 12-10-13 [88]

8. 09-93922-D-13 RAMIRO/KRISTINA DELEON MOTION TO VALUE COLLATERAL OF
JDP-1 CITIBANK, N.A.
12-30-13 [34]

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.

9. 13-90825-D-13 JEFFREY DAVIS MOTION TO CONFIRM PLAN
MA-1 12-17-13 [52]

Final ruling:

This case was dismissed on December 23, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

10. 13-91828-D-13 THOMAS/JOCELYN OWENS
TPH-3

MOTION TO CONFIRM PLAN
12-23-13 [34]

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; (2) the plan is supported by amended Schedules I and J that were not filed under cover of an amendment cover sheet, EDC Form 2-015, and are not otherwise verified by the debtors, as required by Fed. R. Bankr. P. 1008; and (3) the moving parties failed to serve Aes/usefg Elt Bony, listed on their Schedule F as being owed \$196,797 and \$15,963, at all. The creditor has, since the filing and service of the motion, filed a proof of claim; however, at the time of service of the motion, the creditor had not filed a proof of claim, and thus, was required to be served at the address on the debtors' schedules. Fed. R. Bankr. P. 2002(g)(2). The debtors listed this creditor on their Schedule F by name only, with no address, but they failed to demonstrate that after the exercise of reasonable diligence, they were unable to locate an address for this creditor. (The matter is simplified now that the creditor has filed a proof of claim. See Fed. R. Bankr. P. 2002(g)(1).)

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

11. 11-93329-D-13 CLARA/FERNANDO CASILLAS
BSH-5

MOTION TO APPROVE LOAN
MODIFICATION
1-15-14 [50]

Tentative ruling:

This is the debtors' motion for approval of a mortgage loan modification. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, as a preliminary matter, the court notes that, although the loan modification would result in a significant change in the debtors' budget, they served only the chapter 13 trustee and the United States Trustee, and did not serve any of the creditors. For this reason, the court intends to deny the motion or, in the alternative, to continue the hearing to allow proper notice to be given.

The court will hear the matter.

12. 13-92133-D-13 RICHARD/ALICIA AZEVEDO
SDM-1

MOTION TO VALUE COLLATERAL OF
MOCSE FCU
1-7-14 [16]

Final ruling:

This is the debtors' motion to value collateral of MOCSE Federal Credit Union ("MOCSE"). The motion will be denied because the moving parties failed to serve MOCSE in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served MOCSE, which is not an FDIC-insured institution, by certified mail to the attention of any Bank Officer, whereas the

rule requires that entities that are not FDIC-insured institutions be served by first-class mail (see preamble to Fed. R. Bankr. P. 7004(b)), not certified mail. If service by certified mail on an entity that is not FDIC-insured were appropriate, the distinction made by the two subsections of Rule 7004 would be superfluous.

The court notes also that the language in paragraph 1 of the motion - "The Debtor's [sic] value the collateral at \$129,570.00, with the balance of the loan to be treated as a general unsecured debt" - is confusing, in that it suggests the portion of the loan above \$129,570 will be treated as unsecured and the portion at or below that amount will be treated as secured, whereas that is not the debtors' intention.

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

13. 13-90736-D-13 VICTOR/ANNE VIERRA
CJY-1

OBJECTION TO CLAIM OF WELLS
FARGO FINANCIAL CALIFORNIA,
INC., CLAIM NUMBER 2
12-19-13 [26]

14. 08-92637-D-13 DHARMENDRA/SUMINTRA
CJY-3 SHARMA

MOTION TO EXCUSE DEBTOR
DHARMENDRA N. SHARMA FROM
COMPLETING 11 U.S.C. SECTION
1328 CERTIFICATE OR CERTIFICATE
OF CHAPTER 13 DEBTOR RE: 11
U.S.C. SECTION 522(Q)
EXEMPTIONS
1-6-14 [45]

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 Dharmendra N. Sharma 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 Dharmendra N. Sharma 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.

15. 08-91538-D-13 JOHNNY/ANNIE CARRIZALES MOTION TO VALUE COLLATERAL OF
JDP-1 BANK OF AMERICA, N.A.
1-9-14 [101]

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.

16. 13-91638-D-13 SHAWNTE PRIEST MOTION TO CONFIRM PLAN
PGM-1 12-20-13 [39]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because, as the trustee contends in his opposition, the plan has not been proposed in good faith.

In his objection to the debtor's original plan, the trustee raised the same three objections he raises to the present amended plan; his objection was sustained on December 3, 2013. Capital One Auto Finance had also raised an objection to the original plan, on the ground that the plan proposed to pay its secured claim at only \$18,575, whereas the debtor had not sought an order valuing the collateral securing the claim. Because the court sustained the trustee's objection, Capital One's objection was overruled as moot.

With this amended plan, the debtor has increased the amount to be paid on Capital One's claim to \$23,025, the full amount of its secured claim, as reflected in its proof of claim filed in this case. The debtor has made no other changes to the plan, has failed to address in any way the trustee's three objections to her original plan, and has offered no explanation of her failure to do so. Thus, it appears the debtor intends to chip away at the objections to her plan one at a time, resulting in unnecessary delay and wasting the trustee's and the court's time.¹ For this reason, the court concludes that the plan has not been proposed in good faith, and the motion will be denied.

The motion will be denied by minute order. No appearance is necessary.

¹ The court is aware of the debtor's reply, filed February 4, 2014, to the trustee's opposition. Although the reply appears to address one of the trustee's points, it does not address the other two. Further, although technically timely as a reply, the new information in the reply was accompanied by amended Schedules I and J and an amended Form 22C, filed, like the reply, just one week before the hearing. It is entirely inappropriate to ignore the trustee's objections (and the court's order sustaining them) until after the trustee has had to raise them again. Further, the filing of amended schedules and forms one week before a hearing on a motion to confirm a plan provides no opportunity at all for creditors to properly consider the motion.

17. 13-92141-D-13 EDDIE/EVA GONZALEZ MOTION TO VALUE COLLATERAL OF
JDP-1 CITIBANK, N.A.
1-6-14 [16]

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.

18. 13-91545-D-13 THOMAS/ZENIA HANSEN MOTION TO REFINANCE
RAC-1 1-10-14 [24]

Final ruling:

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

19. 10-93048-D-13 SCOTT/CINDY HOLMAN MOTION TO VALUE COLLATERAL OF
JDP-1 HOUSEHOLD FINANCE CORPORATION
1-7-14 [50]

Final ruling:

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

20. 12-93060-D-13 LARUE/SANDRA KINERSON OBJECTION TO NOTICE OF
JDP-3 POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
12-31-13 [41]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

21. 12-91575-D-13 DUSTIN/JENNIFER MCHENRY MOTION TO VALUE COLLATERAL OF
JDP-1 BANK OF THE WEST
1-8-14 [71]

Final ruling:

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

22. 10-94187-D-13 LARRY/CLARA GOLDING MOTION TO VALUE COLLATERAL OF
JDP-1 WELLS FARGO BANK, N.A.
1-7-14 [37]

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.

23. 10-93589-D-13 RANDY ESENWEIN AND JANET MOTION TO VALUE COLLATERAL OF
JDP-1 PIERSON WELLS FARGO BANK, N.A.
12-30-13 [62]

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.

24. 10-93402-D-13 BALDOMERO/ANA BEDOLLA MOTION TO VALUE COLLATERAL OF
JDP-1 U.S. BANK, N.A.
1-27-14 [99]

25. 14-90002-D-13 GREGORY SCOTT CONTINUED MOTION TO IMPOSE
DCJ-1 AUTOMATIC STAY
1-14-14 [9]
26. 11-93117-D-13 TIMOTHY/MELISSA FAGNANI MOTION TO VALUE COLLATERAL OF
TBC-1 HSBC BANK USA, N.A.
1-27-14 [34]
27. 13-92154-D-13 ENRIQUE/ROSA MORAN MOTION TO VALUE COLLATERAL OF
MLP-1 VERIPRO SOLUTIONS, INC.
1-23-14 [15]
28. 13-92063-D-13 VICTOR REYES UMANA OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
1-22-14 [35]

29. 13-91668-D-13 LORENZO/LEONOR LAZARO CONTINUED OBJECTION TO
PPR-1 CONFIRMATION OF PLAN BY THE
BANK OF NEW YORK MELLON
11-26-13 [41]
30. 12-91384-D-13 FAY ADAMS MOTION TO APPROVE LOAN
CJY-2 MODIFICATION
1-27-14 [36]
31. 13-92099-D-13 LINDA VAUGHAN OBJECTION TO CONFIRMATION OF
RDG-3 PLAN BY RUSSELL D. GREER
1-22-14 [29]