

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

February 17, 2015 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.	14-31402-D-13	JAIIME/BENILDA VALDEZ	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 1-9-15 [18]
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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.

2. 14-28610-D-13 WAYNE FLORES AND VAN MOTION TO RECONSIDER ORDER
HWW-4 ASHLEY-FLORES DENYING DEBTOR'S MOTION TO
CONFIRM PLAN
1-20-15 [62]
CASE DISMISSED AS TO VAN M.
ASHLEY-FLORES ONLY

Final ruling:

This is the debtor's motion for reconsideration of the civil minute order issued January 6, 2015 denying the debtor's motion to confirm a second amended chapter 13 plan (the "motion to confirm"). No party-in-interest has filed opposition. For the following reasons, the motion will be granted.

The court issued a final ruling denying the motion to confirm based on the debtor's failure to serve Kay Jewelers and Dorothy Healy. The debtor has demonstrated by this motion that the motion to confirm was served on Kay Jewelers through the creditor who had filed a proof of claim superseding the listing on the debtor's Schedule D, pursuant to Fed. R. Bankr. P. 2002(g)(1). The court overlooked the superseding proof of claim in its review of the motion to confirm.

The debtor has also demonstrated by admissible evidence that any obligation to Dorothy Healy is the separate obligation of the debtor's estranged spouse. As this case had earlier been dismissed as to the debtor's spouse, the debtor was not required to serve the motion to confirm on Dorothy Healy.

For these reasons, the court will grant the motion to reconsider and vacate the minute order denying the motion to confirm, DN 61. The trustee had withdrawn his opposition to the motion to confirm prior to the hearing, and no other party-in-interest filed opposition to the motion to confirm. Accordingly, the court will grant the motion to confirm by minute order. The moving party is to lodge an order confirming the second amended 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.

The court will grant this motion by minute order. No appearance is necessary.

3. 14-27314-D-13 JUAN HERNANDEZ AND MARIA MOTION TO CONFIRM PLAN
TOG-4 ROMAN 12-26-14 [44]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties failed to serve the creditors filing Claim Nos. 10 through 13 at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g). (These claims were filed well in advance of the date the motion was served. However, the moving parties utilized an outdated PACER matrix; as a result, these claimants were not served at the required addresses.)

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

4. 13-21516-D-13 JAMES/ELEANOR WOOD OBJECTION TO CLAIM OF DEUTSCHE
JMG-5 BANK NATIONAL TRUST COMPANY,
CLAIM NUMBER 4
1-4-15 [99]

Tentative ruling:

This is the debtors' objection to the claim of Deutsche Bank National Trust Company (the "Claimant"). The objection is not specific as to the relief sought - it simply says the debtors request an order granting this objection. However, it is clear from the objection and supporting declaration and exhibits that the objection is directed only to the amount of pre-petition arrearages set forth in the proof of claim, \$1,421.49.

The debtors have submitted evidence sufficient to overcome the prima facie validity of the proof of claim, so as to shift the burden of proof to the Claimant to prove the validity of the claim. See Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (citations omitted). The Claimant has not filed opposition to the objection.

However, the court is not prepared to sustain the objection at this time because the debtors failed to give notice of the objection in strict compliance with LBR 3007-1(c), which requires that an objection to a proof of claim be served on the claimant at the address on the proof of claim and the address listed in the debtors' schedules, if different. Here, the debtors served the Claimant at the address on its proof of claim, but not at the different address on the debtors' Schedule D. As a result, the court intends to continue the hearing to permit the debtors to serve the Claimant at the address on their Schedule D. The debtors will need to give either 30 or 44 days' notice of the continued hearing, as required by LBR 3007-1.

The court will hear the matter.

5. 14-31730-D-13 RONNIE/DONNA CASTELLANOS OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
1-23-15 [16]

6. 14-27334-D-13 STEVEN/CYNTHIA PETLANSKY MOTION TO CONFIRM PLAN
DN-1 1-7-15 [39]

7. 14-28039-D-13 MARCO PIEDRA
NFG-1

MOTION TO CONFIRM PLAN
12-31-14 [58]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve the two creditors who have filed claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); and (2) the moving party failed to serve the co-debtor listed on the debtor's Schedule H, and thus, failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). Minimal research into the case law concerning § 101(5) and (10) of the Code discloses an extremely broad interpretation of "creditor," certainly one including co-debtors of the debtor. Thus, the co-debtor should have been listed on the debtor's master address list (Fed. R. Bankr. P. 1007(a)(1)) (she was not), and should have been served with this motion. Fed. R. Bankr. P. 2002(b).

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

8. 14-30039-D-13 FERNANDO/CATALINA MENDOZA
TOG-1

MOTION TO CONFIRM PLAN
12-30-14 [28]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties failed to serve all creditors, as required by Fed. R. Bankr. 2002(b). The moving parties failed to serve 8858 E. Highway 88, LLC, listed on the debtors' Schedule F. (The moving parties listed this creditor on their master address list with an incomplete address, although a complete address appears on Schedule F; thus, this creditor is listed on the PACER matrix utilized by the moving parties as having been bypassed for notice due to an undeliverable address.)

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

9. 14-31741-D-13 RUBEN VALLEJO
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-23-15 [24]

10. 11-25444-D-13 JOSE/TAMMY MAGALLANES MOTION TO MODIFY PLAN
HWW-6 12-12-14 [95]

11. 14-31344-D-13 SANTIAGO/ARGELIA CAMPERO MOTION TO VALUE COLLATERAL OF
HWW-3 GREEN TREE SERVICING, LLC
1-19-15 [28]

Final ruling:

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

12. 14-27445-D-13 PETER/LORI KOULOURIS OBJECTION TO DEBTORS' CLAIM OF
RDG-4 EXEMPTIONS
12-29-14 [90]

13. 14-29854-D-13 FABIAN PELAYES AND MOTION TO VALUE COLLATERAL OF
PLL-1 DEOLINDA MOYANO CITIBANK, N.A. AND/OR MOTION TO
VALUE COLLATERAL OF U.S. BANK
HOME MORTGAGE
12-10-14 [26]

Final ruling:

This is the debtors' motion to value collateral of Citibank, N.A. ("Citibank") and U.S. Bank Home Mortgage ("U.S. Bank"). The motion will be denied for the following reasons. First, the language of the proofs of service is confusing and not sufficiently clear to evidence service. The moving parties filed two proofs of service in connection with this motion, the first on December 10, 2014 and the second on January 12, 2015. The second was filed the same day as a second notice of motion - one that included a hearing date and time shown on the court's list of self-set hearing dates and times. (The original notice had purported to set the

hearing for a date and time not shown on that list.) The notice of motion and proof of service filed January 12, 2015 include the word "Amended" in the caption just above the case number; the word "amended" does not appear in the title of either document. Thus, the second proof of service, the one filed January 12, 2015, purports to evidence service of exactly the same documents that are referred to in the original proof of service. As a result, there is insufficient evidence to demonstrate that the second notice of motion, the one containing the correct hearing date and time, was ever served.

Further, the second page of the two proofs of service contains a confusing list of names and addresses that appears to be a hybrid of a notice of hearing and a proof of service. In fact, the two notices of motion conclude with the same language as the proofs of service: "I am 'readily familiar' with the firm's practice of collection and processing correspondences for mailing, [etc.]" And the two notices of motion are signed not by the debtors' attorney but by the same individual who signed the proofs of service. Some of the names and addresses in the list on the second page of the proofs of service are prefaced with words identifying the party, such as "The Trustee's address is:" and "The Debtors' address is:"; others are not. It cannot be determined which parties in the list of names and addresses, if any, were served and which names and addresses were included simply to notify the potential respondents of the parties on whom opposition, if any, must be served.

Second, assuming without deciding that Citibank and U.S. Bank were actually served and that their names and addresses shown on page 2 of the two proofs of service, followed by "Certified mail," accurately reflect the manner in which service was addressed and mailed, the moving parties failed to served Citibank or U.S. 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 banks by certified mail at street addresses, with no attention line, whereas the rule requires that FDIC-insured institutions be served to the attention of an officer. Fed. R. Bankr. P. 7004(h). Further, U.S. Bank has appeared in this case through an attorney who filed an objection to confirmation well in advance of the filing of this motion. Thus, the moving parties were required to serve U.S. Bank through that attorney by first-class mail (Fed. R. Bankr. P. 7004(h), subd. (1)), whereas they failed to serve him at all.

Finally, as to U.S. Bank, the motion is not supported by evidence sufficient to establish its factual allegations and to demonstrate that the moving parties are entitled to the relief requested. The debtors' declaration lists the following deeds of trust against their residence:

U.S. Bank Home Mortgage	1st Mortgage	\$228,125
Citibank N.A.	2nd Mortgage	\$ 25, 516
U.S. Bank Home Mortgage	3rd Mortgage	\$ 71,587

Based on the value of the property in the debtors' opinion, \$207,092, the debtors contend there is no equity in the property to support the second and third deeds of trust. The problem is that U.S. Bank has filed a proof of claim for \$297,729.30, with an attachment showing \$226,142.66 as the total principal and interest due and \$71,586.64 as the total of "Deferred Amounts." These two figures add up to the total claim amount, \$297,729.30; the second figure, \$71,586.64, is the same as the amount listed in the debtors' declaration as the amount due on a third

mortgage, rounded to the nearest dollar, \$71,587. Also attached to the proof of claim is a Modification Agreement dated June 1, 2010 which states that repayment of a portion of the principal balance due on the note, totaling \$71,586.64, will be deferred until the earliest of the date the property is sold, the date the amortizing principal is paid in full or the loan is refinanced, or the maturity date, January 1, 2045. There is a copy of one deed of trust attached to the proof of claim, not two.

Given that documentation, it appears the \$71,587 referred to in the debtors' declaration as the amount of a third mortgage is not actually the amount due on a third mortgage that should be valued at \$0, but rather a portion of the amount due on the first mortgage that has been deferred by agreement of the parties. Absent evidence of sufficient probative value to overcome the apparent validity of the documentation attached to U.S. Bank's proof of claim, the court will not grant a motion seeking to value a \$71,587 mortgage at zero.

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

14. 14-31969-D-13 MARTIN/SOCORRO PADILLA OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
1-23-15 [17]

15. 13-27185-D-13 KEVIN/DINA HVIZDA MOTION TO COMPROMISE
RLF-1 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CITY LOAN AND
CITY TITLE LOAN, LLC
1-20-15 [26]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

16. 14-31086-D-13 CORINTHIAN JONES MOTION TO VALUE COLLATERAL OF
PGM-2 ALLY FINANCIAL
1-20-15 [40]

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.

17. 14-31086-D-13 CORINTHIAN JONES OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
1-5-15 [22]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. On January 20, 2015, the debtor filed an amended claim of exemptions. As a result of the filing of the amended claim of exemptions, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

18. 13-33096-D-13 OSCAR/LIGIA GARZON MOTION TO MODIFY PLAN
JAD-1 1-6-15 [25]

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. 14-26614-D-13 VALERIA LABORDE CONTINUED MOTION TO RECONVERT
RDG-3 CASE FROM CHAPTER 13 TO CHAPTER
7
11-4-14 [50]

20. 11-38930-D-13 MICHAEL/SUMMER MEYER MOTION TO INCUR DEBT
CJY-1 1-26-15 [43]
21. 14-31634-D-13 WILLARD/PATRICIA MAYNARD CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
1-9-15 [21]
22. 14-31741-D-13 RUBEN VALLEJO OBJECTION TO CONFIRMATION OF
BHT-1 PLAN BY OCWEN LOAN SERVICING,
LLC
1-26-15 [27]
23. 14-28442-D-13 PAUL MILLER CONTINUED MOTION TO CONFIRM
CAH-3 PLAN
12-12-14 [44]

Final ruling:

The trustee has withdrawn his opposition to this motion, 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 the 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.

24. 11-25444-D-13 JOSE/TAMMY MAGALLANES MOTION TO APPROVE LOAN
HWW-7 MODIFICATION
2-3-15 [102]

25. 14-31860-D-13 JARED GOODRICH OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
1-23-15 [19]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

26. 14-31969-D-13 MARTIN/SOCORRO PADILLA OBJECTION TO CONFIRMATION OF
PD-1 PLAN BY CITIMORTGAGE, INC.
1-28-15 [20]

27. 14-31972-D-13 MIGUEL/GLORIA VARGAS OBJECTION TO CONFIRMATION OF
PD-1 PLAN BY WELLS FARGO FINANCIAL
CALIFORNIA, INC.
1-28-15 [17]

28. 14-31402-D-13 JAIME/BENILDA VALDEZ
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
1-9-15 [23]