

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

March 31, 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.	15-21300-D-13	JOSE RODRIGUEZ	MOTION TO VALUE COLLATERAL OF
	MJH-1		OCWEN FEDERAL BANK, FSB
			2-23-15 [8]

Final ruling:

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

2. 15-20103-D-13 CHARANJIT SINGH OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
2-20-15 [26]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The trustee objected on the ground that the debtor had failed to file a spousal waiver to allow him to use the exemptions provided by Cal. Code Civ. Proc. § 703.140(b). On March 5, 2015, the debtor filed a spousal waiver in the appropriate form signed by the debtor and his spouse. As a result of the filing of the spousal waiver, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

3. 11-41005-D-13 ROBERT/ALMA MOON MOTION TO MODIFY PLAN
RAC-2 2-11-15 [43]

4. 14-30013-D-13 ALICIA SANTOS MOTION TO APPROVE LOAN
KAZ-1 MODIFICATION
2-26-15 [36]

Final ruling:

This is the motion of secured creditor Wells Fargo Bank for an order authorizing a loan modification agreement. The court is not prepared to consider the motion at this time because the moving party served only the debtor, the debtor's attorney, the chapter 13 trustee, and the United States Trustee, and a party requesting special notice in the case, and failed to serve any other creditors, despite the fact that the loan modification arguably affects their interests. The court will continue the hearing and require the moving party to file a notice of continued hearing and serve it, together with the motion and supporting documents, on all creditors. Those creditors who have filed proofs of claim in this case are to be served at the addresses on their proofs of claim; those who have not filed proofs of claim are to be served at the addresses listed on the debtor's schedules. The court will continue the hearing to April 28, 2015 at 10:00 a.m.. The moving party must give notice of the continued hearing in accordance with the above pursuant to LBR 9014-1(f)(1) or (f)(2). No appearance is necessary on March 31, 2015.

5. 14-31517-D-13 RICK/DENISE HUBER MOTION TO CONFIRM PLAN
PK-1 2-13-15 [29]

6. 13-31224-D-13 ALVARO MONCADA AND CARMEN MOTION TO MODIFY PLAN
HLG-1 MORAGA 2-6-15 [84]

7. 15-21025-D-13 CARLOS LOPEZ-SOLIS MOTION TO VALUE COLLATERAL OF
JCK-1 REAL TIME RESOLUTIONS
2-16-15 [8]

Final ruling:

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

8. 14-28026-D-13 MIGUEL/MARTHA GOMEZ AMENDED MOTION TO CONFIRM PLAN
RLG-2 2-10-15 [96]

Final ruling:

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

9. 15-20127-D-13 RUBEN/ROSALIE GONZALES
AFL-1

MOTION TO VALUE COLLATERAL OF
GREEN TREE SERVICING, LLC
2-20-15 [15]

Final ruling:

This is the debtors' motion to value collateral of "Green Tree Servicing, LLC, for CitiFinancial Services, Inc." (the "Creditor"). The motion will be denied because the moving parties failed to serve the Creditor in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Creditor in the following ways: (1) Green Tree Servicing, LLC by first-class mail at a post office box address and a street address, with no attention line; (2) CitiFinancial Services, Inc. by first-class mail at a street address, with no attention line; (3) OneMain Financial, Inc. at a post office box address and a street address, with no attention line; (4) OneMain Financial by certified mail to its registered agent for service of process; and (5) Citibank, N.A. by certified mail to the attention of an officer, managing or general agent, or agent for service of process. The first and second methods were insufficient because service on a corporation, partnership, 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 third method was insufficient because there was no attention line, and also because the moving papers do not mention OneMain Financial and do not indicate it has anything to do with the creditor to whom the motion is directed. The fourth method was insufficient for the same reason and also because OneMain Financial is not an FDIC-insured institution, and therefore, was required to be served, if at all, by first-class mail, not certified mail. Compare preamble to Fed. R. Bankr. P. 7004(b) with Fed. R. Bankr. P. 7004(h). The fifth method was insufficient because the creditor to whom the motion is directed is Green Tree Servicing, LLC, for CitiFinancial Services, Inc., not Citibank, N.A., and also because Citibank, N.A. is an FDIC-insured institution, and therefore, was required to be served, if at all, to the attention of an officer and only an officer, and not to the attention of an officer, managing or general agent, or agent for service of process. Compare Fed. R. Bankr. P. 7004(b)(3) with Fed. R. Bankr. P. 7004(h).

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

10. 14-31730-D-13 RONNIE/DONNA CASTELLANOS
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
1-23-15 [16]

11. 14-29931-D-13 LISA ROCHA CONTINUED OBJECTION TO
RDG-3 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
11-24-14 [25]

12. 14-26232-D-13 ADAM/SANDRA LEIGHTON MOTION TO CONFIRM PLAN
BSH-6 1-26-15 [119]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties failed to serve the IRS and the Franchise Tax Board at their addresses on the Roster of Governmental Agencies, as required by LBR 2002-1(c); and (2) the plan provides for the secured claim of GM Financial at less than the full amount of the claim, whereas the debtors' motion to value the collateral securing that claim has been denied and no new motion has been filed. Thus, the debtors have not complied with LBR 3015-1(j).

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

13. 11-25640-D-13 SHEILA BALLIN MOTION TO MODIFY PLAN
CJY-2 2-20-15 [101]

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.

14. 12-33940-D-13 JOHN/EVA PAYAN MOTION TO INCUR DEBT
JCK-5 2-12-15 [57]

15. 12-33940-D-13 JOHN/EVA PAYAN MOTION TO MODIFY PLAN
JCK-6 2-12-15 [61]

16. 10-39749-D-13 FATEMA ASSAFI AND FARHAD MOTION TO MODIFY PLAN
CVW-7 ASSIFI 2-17-15 [99]

Final ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties failed to serve either of the creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g)(1); (2) the moving parties failed to serve either of the creditors requesting special notice in this case at their designated addresses, as required by Fed. R. Bankr. P. 2002(g)(1); and (3) the plan contains inconsistent provisions, including (a) that it states in para. 1.03 that the plan term is one month whereas this case has been pending for several years; and (b) that it states in para. 2.15 that the dividend to general unsecured creditors is 0% whereas in the Additional Provisions, it states that "this is a 100 percent plan."

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

17. 10-39749-D-13 FATEMA ASSAFI AND FARHAD CONTINUED MOTION TO APPROVE
EGS-1 ASSIFI LOAN MODIFICATION
12-1-14 [88]

18. 14-25359-D-13 LILLIAN GLEASON MOTION TO DISMISS CASE
RLG-6 3-3-15 [109]

19. 14-26159-D-13 ELIZABETH MIDDLEKAUFF
MG-4

MOTION TO CONFIRM PLAN
2-9-15 [93]

20. 14-27267-D-7 SARAD/USHA CHAND
RLG-2

OBJECTION TO CLAIM OF INTERNAL
REVENUE SERVICE, CLAIM NUMBER 1
1-30-15 [53]

Final ruling:

This is the debtors' objection to the claim of the Internal Revenue Service ("IRS"). The IRS has filed opposition. For the following reasons, the objection will be overruled.

First, it cannot be determined which portions of the claim the debtors are objecting to. The objection refers to the secured and general unsecured portions of the claim, adding that, whereas the claim states that the tax returns for 2010 through 2013 were not filed, the debtors have now filed their returns for those years. However, the secured portion of the IRS's claim does not indicate that tax returns have not been filed; thus, the court cannot discern the basis for the debtors' objection to the secured portion of the claim, if in fact they are objecting to that portion.

Second, "[a] proof of claim executed and filed in accordance with [the Bankruptcy Rules] shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). "Upon objection, [a] proof of claim provides 'some evidence as to its validity and amount' and is 'strong enough to carry over a mere formal objection without more.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (citation omitted). "To defeat the claim, the objector must come forward with sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proof[] of claim [itself].'" Id. (citation omitted, emphasis added).

In support of an earlier objection to the IRS's original claim, the debtors submitted no evidence at all. This time, they have submitted (1) alleged copies of the second pages of their Forms 1040 for 2010, 2011, and 2012 (none for 2013); and (2) copies of certified mail receipts addressed to the IRS and the Franchise Tax Board. The latter prove nothing; the former are incomplete and unauthenticated copies, and thus, are inadmissible. As the debtors have submitted no admissible evidence, they have failed to shift the burden of production back to the IRS. Id. (citation omitted).

As an aside, the court cautions the debtors' counsel that there are procedural defects in the notice of hearing, defects that have been waived in this instance by the filing of opposition. However, for future reference, counsel should note that

(1) the notice of hearing provides incorrect information about the time for filing written opposition - within 14 days before the hearing date, whereas the correct deadline is at least 14 days before the hearing date; and (2) the notice is in the nature of a hybrid of LBR 9014-1(f) (1) and (f) (2) in that it states that "if there is not a timely objection to the requested relief or appearance at a hearing, the Court may enter an order granting the relief by default," whereas a motion must be noticed as one or the other.

For the reasons stated, the objection will be overruled by minute order. No appearance is necessary.

21. 11-40972-D-13 STONEY/SUSAN WALLER MOTION TO MODIFY PLAN
CJY-2 2-24-15 [46]

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.

22. 14-31972-D-13 MIGUEL/GLORIA VARGAS MOTION TO CONFIRM PLAN
TOG-2 2-12-15 [23]

23. 12-26983-D-13 FRANK DAY MOTION TO AMEND ORDER ON MOTION
LRR-7 TO APPROVE REVERSE MORTGAGE
2-24-15 [110]

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 amend order on motion to approve reverse mortgage is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order to the trustee for approval as to form before it is lodged with the court. No appearance is necessary.

24. 13-35783-D-13 ALDRICH FLORES AND KAREN MOTION TO MODIFY PLAN
MDL-5 VIGILIA 2-4-15 [97]

25. 12-28185-D-13 ANTOINETTA TREISS CONTINUED MOTION TO CONFIRM
BSH-5 PLAN
12-3-14 [165]

26. 12-28185-D-13 ANTOINETTA TREISS OBJECTION TO CLAIM OF BANK OF
BSH-6 AMERICA, N.A., CLAIM NUMBER 7
2-26-15 [178]

Tentative ruling:

This is the debtor's objection to the arrearage portion of the claim of Bank of America (the "Bank"), Claim No. 7, \$11,162.28. The Bank has filed opposition. For the following reason, the court intends to sustain the objection, although it is not persuaded the debtor owes no arrearage to the Bank.

The debtor testifies in her declaration that she is not in arrears on her debt to the Bank secured by a deed of trust. She includes in her declaration a table listing her payments to the Bank between and including April 2014 and November 2014. From April through October, the debtor made payments of \$1,594.65 each, and in November, she made a payment of \$2,213.11.

The Bank responds that the debtor has in fact made every post-petition payment since this case was commenced, in April 2012. (The case was converted to chapter 13 on May 17, 2014.) However, the Bank claims some of the payments have been in the wrong amount. According to the Bank, the default occurred when the debtor stopped paying her property taxes in September 2012. At that time, the Bank began advancing funds to the county and established an escrow account such that, in addition to principal and interest of \$1,594.65 per month, the debtor was to pay \$618.46 per month into the escrow account, for a new total payment of \$2,213.11 per month. The Bank demonstrates that the debtor made payments in the increased amount in November and December 2014, but that before that; that is, up through October 2014, she was

making payments of only \$1,594.65 per month, which covered the principal and interest due, but not the escrow payment. The table the debtor included in her declaration supports this conclusion.

The Bank notes that the debtor's proposed chapter 13 plan (Item 25 on this calendar), as well as an earlier plan, filed June 2, 2014, indicated the debtor would make mortgage payments directly to the Bank in the amount of \$2,218 per month. This indicates the debtor was aware the mortgage payment was higher than the principal and interest amount of \$1,594.65 she paid through October 2014. Finally, the Bank states that the "[a]s of the date the bankruptcy case converted, the default amount added up to 6 missed payments at \$2,213.11 each, minus \$2,146.38 amount in suspense." (These figures would result in an arrearage of \$11,132.28 [(\$2,213.11 x 6) - \$2,146.38], whereas the arrearage amount in the Bank's proof of claim is \$11,162.28.)

This calculation cannot be correct because if the debtor has made a mortgage payment every month, as the Bank admits, even if in the wrong amount, she cannot have missed six payments at \$2,213.11 each. It does appear the debtor was in default in some amount as of the date of conversion, in May of 2014; however, the amount cannot be based on six missed payments at the full amount of \$2,213.11 each. For this reason, the court intends to sustain the objection.

The court will hear the matter.

27. 14-21386-D-13 ROSIA/LINDA EALY MOTION TO MODIFY PLAN
JDP-4 2-23-15 [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.

28. 15-20091-D-13 SONIA MCDADE-THREADGILL OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
2-20-15 [25]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response has been filed. The objection is supported by the record. The court will sustain the trustee's objection to the debtor's claim of exemptions. The trustee is to submit an appropriate order. No appearance is necessary.

29. 14-30095-D-13 SHEILA TERRY CONTINUED MOTION TO CONFIRM
BAS-1 PLAN
1-6-15 [39]

Final ruling:

This is the debtor's motion to confirm a third amended chapter 13 plan. On February 18, 2015, the debtor filed a different amended plan (although not entitled fourth amended plan). As a result of the filing of the different plan, the present motion is moot. The motion will be denied by minute order as moot. No appearance is necessary.

30. 14-32414-D-13 JEFFREY/JANETH JOHNSON CONTINUED MOTION FOR RELIEF
ADR-1 FROM AUTOMATIC STAY
ABBEY POINTE APARTMENTS, LLC 2-4-15 [21]
VS.

31. 15-20427-D-13 OSCAR WILLS OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
3-10-15 [16]

32. 14-30129-D-13 HOWARD/MARJORIE BINDER OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
3-9-15 [43]

33. 14-31730-D-13 RONNIE/DONNA CASTELLANOS MOTION TO AVOID LIEN OF COUNTY
MC-3 OF SAN JOAQUIN TREASURER & TAX
COLLECTOR REVENUE & RECOVERY
DIVISION
3-10-15 [43]
34. 14-31730-D-13 RONNIE/DONNA CASTELLANOS MOTION TO AVOID LIEN OF COUNTY
MC-4 OF SAN JOAQUIN TREASURER & TAX
COLLECTOR REVENUE & RECOVERY
DIVISION
3-10-15 [48]
35. 15-20151-D-13 HERBERT ALEXANDER OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
3-9-15 [21]
36. 15-20153-D-13 ERIC THOMAS OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
3-9-15 [18]

37. 14-30972-D-13 PAMELA BECKER
RDG-3

MOTION TO DISMISS CASE
3-13-15 [34]

Matter to be heard at 10:30 a.m.

38. 09-47175-D-13 REYNALDO/DENISE DELGADO
CJY-2

MOTION TO VALUE COLLATERAL OF
OCWEN LOAN SERVICING, LLC
3-6-15 [128]

39. 15-20091-D-13 SONIA MCDADE-THREADGILL
RDG-1

MOTION TO DISMISS CASE
3-12-15 [29]

Matter to be heard at 10:30 a.m.