

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

April 12, 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.	15-90904-D-13 TOG-1	KURT/MARIA OBISPO	CONTINUED MOTION TO CONFIRM PLAN 1-12-16 [36]
2.	15-90904-D-13 TOG-2	KURT/MARIA OBISPO	OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 2 2-22-16 [55]

Tentative ruling:

This is the debtors' objection to the secured claim of the Internal Revenue Service, Claim No. 2-1, in the amount of \$104,146.23.1 The objection was noticed pursuant to LBR 9014-1(f) (1) (the applicable rule is LBR 3007-1(b) (1)) and no

opposition has been filed. However, that does not by itself entitle the debtors to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Thus, the court will consider the merits of the objection.

The debtors object to the secured portion of the claim on the ground they do not own any non-exempt property to support the secured claim. The objection is supported by the declaration of debtor Maria Obispo, who testifies the debtors do not have any non-exempt property. The problem is § 522(c)(2)(B) of the Bankruptcy Code, which provides that exempt property is not liable for pre-petition debts except a debt secured by a properly-filed tax lien. Thus, "property exempted from the estate remains subject to tax liens. Congress could hardly have been more direct in declaring that result." DeMarah v. United States (In re DeMarah), 62 F.3d 1248, 1251 (9th Cir. 1995); see also In re Duncan, 406 B.R. 904, 911 (Bankr. D. Mont. 2009) ("Under 11 U.S.C. § 522(c)(2)(B), any exemption claimed by the Debtors has no effect in the face of tax liens securing prepetition claims.").

For the reasons stated, the objection will be overruled. The court will hear the matter.

1 The court notes that the IRS has filed an amended proof of claim listing the secured portion of the claim as \$30,410 (Claim No. 2-3), as opposed to \$104,146.23, as listed in the proof of claim the debtors have objected to (Claim No. 2-1). The analysis is the same as to both.

3. 11-94412-D-13 EDUARDO/LINDA GONZALEZ MOTION TO MODIFY PLAN
MSN-2 3-7-16 [58]

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. 13-90814-D-13 LAURA MEJIA
MC-4

MOTION TO VALUE COLLATERAL OF
MECHANIC'S LIEN RECORDED BY
BRIAN K. SMITH
3-15-16 [66]

Final ruling:

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

5. 12-91015-D-13 GREGORY/DOLORES STEFFENS
CJY-2

MOTION TO SUBSTITUTE DOLORES
STEFFENS AS THE REPRESENTATIVE
FOR GREGORY F. STEFFENS, MOTION
TO EXCUSE DEBTOR GREGORY F.
STEFFENS FROM COMPLETING THE 11
U.S.C. SECTION 1328 CERTIFICATE
OR CERTIFICATE OF CHAPTER 13
DEBTOR, ETC.
3-8-16 [42]

Final ruling:

This is the joint debtor's motion to substitute her as the sole representative of the debtor in this case and to excuse the debtor from filing pre-discharge certificates. The moving party failed to serve the creditors filing Claim Nos. 1-6, 8, 9, 13, 14, and 16-23 at the addresses on their proofs of claim. The court will continue the hearing to April 26, 2016, at 10:00 a.m., the moving party to file a notice of continued hearing and serve it on the claimants listed above at the addresses on their proofs of claim. The hearing will be continued by minute order. No appearance is necessary.

6. 15-91228-D-13 BRAD OLIVER
MSN-1

MOTION TO AVOID LIEN OF
CITIBANK, N.A.
2-23-16 [18]

Tentative ruling:

This is the debtor's motion to avoid a judicial lien held by Citibank, N.A. (the "Bank"). The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, that does not by itself entitle the debtor to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Thus, the court will consider the merits of the motion.

For a judicial lien to be avoidable, it must impair an exemption to which the debtor would otherwise be entitled. § 522(f) (1) of the Bankruptcy Code; In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). Applying the formula set forth in § 522(f) (2) (A), the total of the judicial lien, \$9,250, the deed of trust, \$114,719, and the amount of the debtor's exemption, \$67,785, is \$191,754. A judicial lien is considered to impair an exemption only to the extent that this total exceeds the value the debtor's interest in the property would have in the absence of any liens; in this case, that value is \$191,754. In other words, because the total of the judicial lien, the mortgage lien, and the exemption does not exceed the value of the property, the judicial lien does not impair the exemption. Viewed another way, deducting the amount due on the deed of trust, \$114,719, and the amount of the debtor's exemption, \$67,785, from the value of the property, \$191,754, leaves \$9,250 in equity to secure the Bank's judicial lien.

Because the evidence demonstrates that the judicial lien does not impair the debtor's exemption, the motion will be denied. The court will hear the matter.

7.	16-90040-D-13	SOCORRO CRUZ	OBJECTION TO CONFIRMATION OF
	RDG-1		PLAN BY RUSSELL D. GREER
			3-14-16 [21]

8.	11-93350-D-13	TERESO/ARACELI ALVAREZ	MOTION FOR CONSENT TO ENTER
	BRT-1		INTO LOAN MODIFICATION
			AGREEMENT
			3-9-16 [47]

Final ruling:

This is the motion of Bank of New York Mellon (the "Bank") "for approval to allow [the debtors] to enter into and finalize a loan modification with [the Bank]." For the following reasons, the motion will be denied.

First, it is clear from the trustee's opposition that the proposed loan modification would have an impact on the debtors' plan and on their creditors. However, the Bank served only the debtors, their attorney, the trustee, and the United States Trustee, and failed to serve any creditors. Second, the moving papers do not provide the information necessary to permit creditors to determine whether to oppose the motion or the court to determine whether to grant it. The copy of the modification agreement filed as an exhibit shows the amount of the debtors' ongoing mortgage payment if the agreement is finalized, but there is no information as to what the debtors have been paying. Further, although the motion states that arrears will be capitalized into a new principal balance, it does not indicate what those arrears are or what impact this provision will have on the debtors' budget. Third, the motion is premature. The Bank requests an order permitting the debtors to enter

into "and finalize" the loan modification agreement, provided the Bank retains the right of final approval and the right to reinstate its original terms in the event the agreement is not finalized, and provided that the order does not constitute court approval of the terms of the agreement. Thus, it appears the parties have not reached an agreement.

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

9. 15-91150-D-13 RICHARD ELLIS CONTINUED MOTION TO VALUE
MDA-1 COLLATERAL OF JP MORGAN CHASE
BANK, N.A.
1-12-16 [14]

10. 16-90053-D-13 CHRIS CRUM OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
3-14-16 [12]

11. 15-90156-D-13 CLAUDIA BELL MOTION TO MODIFY PLAN
LBG-2 3-4-16 [46]

12. 12-92857-D-13 SHAWNA COPLEN CONTINUED MOTION TO MODIFY PLAN
JAD-1 2-1-16 [32]

13. 12-92857-D-13 SHAWNA COPLEN CONTINUED OBJECTION TO DEBTOR'S
RDG-1 CLAIM OF EXEMPTIONS
2-12-16 [37]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

14. 16-90058-D-13 MARIA CORTEZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
3-14-16 [12]

15. 15-90566-D-13 HUGH/PENNY BRENNAN OBJECTION TO CLAIM OF INTERNAL
JGL-4 REVENUE SERVICE, CLAIM NUMBER
10
2-16-16 [61]

Final ruling:

This is the debtors' objection to the claim of the Internal Revenue Service, Claim No. 10. The objection was noticed pursuant to LBR 9014-1(f)(1) (the applicable rule is LBR 3007-1(b)(1)) and no opposition has been filed. However, that does not by itself entitle the debtors to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Thus, the court will consider the merits of the objection. As discussed below, the evidence does not demonstrate that the claim should be disallowed, as required by LBR 3007-1(a).

First, the objection is based entirely on copies of tax returns filed as exhibits. The returns are not authenticated, and thus, are inadmissible. With no evidence, the debtors have failed to overcome the prima facie validity afforded the claim under Fed. R. Bankr. P. 3001(f). Second, as to the taxes and interest shown on the IRS's proof of claim as due for the tax years 2008 and 2010, the tax returns alone, even if they were authenticated, would be insufficient to overcome the prima facie validity of the claim. The objection states the debtors' returns for those years were filed in 2009 and 2011, respectively, whereas the proof of claim shows the taxes were assessed later. It is not necessarily the amount shown on a tax return that determines the amount of tax due; after a return is filed, the IRS may assess additional amounts due. See 26 U.S.C. § 6201, et seq.

As the debtors have failed to submit evidence sufficient to demonstrate that the claim should be disallowed, the objection will be overruled by minute order. No appearance is necessary.

16. 15-90772-D-13 DEBORAH WHEELER MOTION TO MODIFY PLAN
BSH-2 2-29-16 [42]

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.

17. 15-90281-D-13 JOSEPH CALDERON MOTION TO MODIFY PLAN
JAD-2 2-18-16 [50]

18. 12-91983-D-13 DEEPESH/KRISTEN CHAND MOTION TO MODIFY PLAN
CJY-6 2-26-16 [94]

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. 15-91197-D-13 CATHERINE CORINA CONTINUED MOTION TO VALUE
PGM-2 COLLATERAL OF WESTAMERICA BANK
2-4-16 [50]

20. 15-91198-D-13 LICHA ABOU NAOUM MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST 3-14-16 [20]
COMPANY VS.

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 relief from stay. As the debtor's Chapter 13 Plan indicates she will surrender the property that is the subject of this motion, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

21. 10-94701-D-13 EFREN/NATALIE MARTINEZ MOTION TO VALUE COLLATERAL OF
CJY-1 WELLS FARGO BANK
3-24-16 [49]

22. 10-93504-D-13 SCARLETT VON EICHEL MOTION TO AVOID LIEN OF BANK OF
DCJ-6 STOCKTON
3-29-16 [124]

23. 16-90218-D-13 GREGORY BRAUN MOTION TO EXTEND AUTOMATIC STAY
LR-1 3-22-16 [24]

Final ruling:

This case was dismissed on April 4, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

24. 15-91221-D-13 ERNEST ALTMANN MOTION FOR RELIEF FROM
RUSHMORE LOAN MANAGEMENT AUTOMATIC STAY
SERVICES, LLC VS. 3-25-16 [34]

**DEBTOR DISMISSED:
03/30/2016**

Final ruling:

The motion is denied for the following reasons: (1) moving party has failed to include an appropriate docket control number as required by LBR 9014-1(c); and (2) moving party's notice of hearing did not provide the appropriate opportunity for opposition when giving less than 28 days' notice as required by LBR 9014-1(f)(2)(c). As a result of these procedural defects, the court will deny the motion by minute order. No appearance is necessary.

25. 15-91162-D-13 DAVID ANDERSON CONTINUED MOTION TO CONFIRM
DCJ-2 PLAN
2-15-16 [29]

26. 10-94363-D-13 MICHAEL MOSLEY AND MOTION TO VALUE COLLATERAL OF
CJY-2 JACQUELINE NEAL-MOSLEY PNC BANK
3-24-16 [131]

27. 15-91165-D-13 VICTOR/EVA PEDROZA
NFG-1

CONTINUED MOTION TO CONFIRM
PLAN
2-12-16 [29]

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.