

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

May 6, 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.

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.	09-92200-D-13	GARY/VALERIE POTTER	MOTION TO VALUE COLLATERAL OF
	JDP-1		BANK OF AMERICA, N.A.
	Final ruling:		3-31-14 [54]

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.	14-90300-D-13	RAFAELA CARRASCO	MOTION TO VALUE COLLATERAL OF
	TOG-1		BANK OF AMERICA, N.A.
	Final ruling:		4-4-14 [22]

The matter is resolved without oral argument. This is the debtor's 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 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 Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

3. 14-90202-D-13 DOUG MULIC OBJECTION TO CONFIRMATION OF
PPR-1 PLAN BY THE BANK OF NEW YORK
MELLON
4-9-14 [26]

Final ruling:

This case was dismissed on April 25, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

4. 14-90202-D-13 DOUG MULIC OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
4-7-14 [23]

Final ruling:

This case was dismissed on April 25, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

5. 12-91504-D-13 SERGIO MALDONADO AND MOTION TO VALUE COLLATERAL OF
TOG-3 GABRIELA GODOY WELLS FARGO BANK, N.A.
4-1-14 [33]

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. 14-90511-D-13 JEMIS/ELIZABETH SEPORGHAN MOTION TO EXTEND AUTOMATIC STAY
TMT-1 4-10-14 [9]

7. 14-90414-D-13 TONYA ANTHONY
DEF-1

MOTION TO VALUE COLLATERAL OF
CENTRAL STATE CREDIT UNION
3-28-14 [7]

Final ruling:

This is the debtor's motion to value collateral of Central State Credit Union; namely, a second position deed of trust against the debtor's residence. The motion will be denied because the moving papers are confusing, and therefore insufficient to notify the Credit Union of the nature of the relief requested. The motion states the alleged value of the property and the alleged amount owing on the first deed of trust, adding that "there is no equity in the property to secure any part of the subject loan." However, the notice of hearing states that the debtor seeks an order valuing the collateral in the amount of \$84,000, "and the balance of the second deed of trust to be treated as a general unsecured claim." This suggests there is a portion of the claim secured by the second that will be treated as a secured claim, which, the court believes, is not the debtor's intention. Because of this ambiguous statement, and because the moving papers do not make clear that the debtor is seeking to value the Credit Union's secured claim at \$0, the motion does not clearly state the nature of the relief requested.

In addition, the motion and supporting declaration give inconsistent figures as to both the value of the property and the amount owing on the first deed of trust.

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

8. 14-90023-D-13 IGNACIO SALCEDO
TOG-4

MOTION TO CONFIRM PLAN
3-23-14 [44]

Final ruling:

This case was dismissed on April 7, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

9. 13-92133-D-13 RICHARD/ALICIA AZEVEDO
SDM-3

MOTION TO VALUE COLLATERAL OF
MOCSE FCU
4-1-14 [36]

Final ruling:

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

10. 13-91638-D-13 SHAWNTE PRIEST MOTION TO CONFIRM PLAN
PGM-2 3-17-14 [62]

11. 10-94640-D-13 BETH LEONARDO-WYATT MOTION TO APPROVE LOAN
SDM-3 MODIFICATION
4-3-14 [56]

12. 13-92141-D-13 EDDIE/EVA GONZALEZ OBJECTION TO NOTICE OF
CJY-1 POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
3-20-14 [28]

Final ruling:

This is the debtors' objection to the attorney's fees claimed in a Notice of Post-Petition Mortgage Fee, Expenses, and Charges, filed February 25, 2014 by CitiMortgage, Inc. ("Citi"). The objection will be overruled because the objecting parties served Citi in accordance with Fed. R. Bankr. P. 7004(b)(3), but failed to serve Citi at the address at which it had earlier, in a request for special notice, requested that notice be given, and failed to also serve it through the attorneys who had filed that earlier request for special notice on Citi's behalf in this case. The court recognizes that the request for special notice states it does not authorize the attorneys to act as Citi's agent for service of process pursuant to Fed. R. Bankr. P. 7004. However, in the request for special notice, which was served on the debtors' counsel, Citi and the attorneys expressly requested that both be noticed, at the addresses in the request, of all matters that must be noticed pursuant to the federal and local rules. Instead, counsel chose to utilize four different service addresses for Citi, but not the two included in the request for special notice. The objecting parties also failed to serve Citi at the address on the Notice of Post-Petition Mortgage Fee, Expenses, and Charges itself.

The motion will be denied as a result of that service defect. However, the court would add that the objection is unclear as to the relief requested. In the prayer, the objecting parties listed as separate forms of relief (1) that Citi provide a reasonable explanation for the time charges the debtors object to; and (2) that if it does not provide an adequate explanation, that the objection be sustained and the fees be reduced to \$0. The objection does not make clear whether Citi was required to provide the explanation before the hearing or whether the debtors were seeking an order requiring Citi to provide the explanation. This is not a serious sticking point, but the matter should be clarified in any subsequent objection.

As a result of the service defect described above, the objection will be overruled by minute order. No appearance is necessary.

13. 10-90042-D-13 GEORGE/KELLY CERNY MOTION TO MODIFY PLAN
CJY-8 4-1-14 [120]

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. 14-90342-D-13 MARTIN/SUSAN DE SOUZA MOTION TO VALUE COLLATERAL OF
BSH-1 CARRINGTON MORTGAGE SERVICES
4-3-14 [18]

Final ruling:

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

15. 14-90342-D-13 MARTIN/SUSAN DE SOUZA MOTION TO VALUE COLLATERAL OF
BSH-2 BEN KUYKENDALL
4-3-14 [29]

Final ruling:

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

16. 09-91249-D-13 RENE/DIAHANN VILLALOBOS MOTION TO SELL
CJY-2 4-10-14 [35]

17. 11-90952-D-13 MICHAEL/MAYUMI FRAZIER MOTION TO APPROVE LOAN
SDM-3 MODIFICATION
4-1-14 [43]

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 approve loan modification is supported by the record. As such the court will grant the motion to approve loan modification by minute order. No appearance is necessary.

18. 10-90154-D-13 ROBERT/DENNELL CALLAGHER MOTION TO MODIFY PLAN
SDM-10 3-19-14 [199]

19. 09-92055-D-13 KELLY/DOLLY WEBB MOTION TO VALUE COLLATERAL OF
JDP-1 JP MORGAN CHASE BANK, N.A.
4-3-14 [40]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of JP Morgan Chase 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 JP Morgan Chase Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

20. 11-90460-D-13 MARK/KATHLEEN HILL CONTINUED MOTION TO MODIFY PLAN
DN-3 1-14-14 [53]

21. 13-91767-D-13 EDWARD JONES
RLF-1

MOTION TO VALUE COLLATERAL OF
NATIONSTAR MORTGAGE, LLC
4-8-14 [23]

Final ruling:

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

22. 11-91974-D-13 WILLIAM/NANCY REESE
JDP-1

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
4-2-14 [50]

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.

23. 14-90477-D-13 BONI CORDOVA-GRIMALDI
SJS-1

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
4-3-14 [9]

Final ruling:

This is the debtor's motion to value collateral of JPMorgan Chase Bank. The motion will be denied for two reasons. First, the motion, notice of hearing, and amended notice of hearing all give an incorrect address of the courthouse where the matter will be heard - 1201 I Street, Suite 4. This is especially important here, where the motion was brought pursuant to LBR 9014-1(f)(2), and the potential respondent may wish to appear at the hearing to apprise the court of its opposition.

Second, the motion, notice of hearing, and amended notice of hearing were all signed by Garrett Lenox "for SJS" - presumably, for the debtor's attorney, Scott J. Sagaria. There is no provision in the federal rules or the local rules for a person who is not a party's attorney (and who may not be an attorney at all ¹) to sign a document filed with the court on behalf of the attorney. Fed. R. Bankr. P. 9011(a) expressly requires that every paper "shall be signed by at least one attorney of record in the attorney's individual name."

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

¹ The State Bar's website does not list a licensed attorney by the name of Garrett Lenox.

24. 14-90378-D-13 LORENA ZAVALA
TOG-1

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
4-4-14 [13]

Final ruling:

The matter is resolved without oral argument. This is the debtor's 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 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 Wells Fargo Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

25. 09-92779-D-13 MANUEL/NICHOLE RODRIGUEZ
JDP-1

MOTION TO VALUE COLLATERAL OF
THE BANK OF NEW YORK MELLON
4-3-14 [51]

Final ruling:

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

26. 14-90380-D-13 DENNIS/CHRISTA MEYERS
DVD-1

MOTION TO VALUE COLLATERAL OF
CITIBANK, N.A.
4-2-14 [9]

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.

27. 13-92182-D-13 MARK/CINDY HARLAN
SJS-1

MOTION TO CONFIRM PLAN
3-25-14 [35]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for two reasons. First, the motion, notice of hearing, and declaration all give an incorrect address of the courthouse where the matter will be heard - 1201 I Street, Suite 4. Second, the motion, notice of hearing, and plan were all signed by someone "for SJS" - presumably, for the debtor's attorney, Scott J. Sagaria. (The signature itself is illegible.) There is no provision in the federal rules or the local rules for a person who is not a party's attorney (and who may not be an attorney at all) to sign a document filed with the court on behalf of the attorney. Fed. R. Bankr. P. 9011(a) expressly requires that every paper "shall be signed by at least one attorney of record in the attorney's individual name."

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

28. 11-92483-D-13 MICHAEL/CAROL TORRES
JDP-1

MOTION TO VALUE COLLATERAL OF
UNION BANK, N.A.
3-27-14 [31]

Final ruling:

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

29. 13-91995-D-13 MIGUEL/GLORIA VARGAS
TOG-2

MOTION TO CONFIRM PLAN
3-18-14 [34]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtors' motion to confirm an amended chapter 13 plan. The trustee has filed opposition on a number of grounds. For the following reason, the motion will be denied.

On the day they filed the motion, and thus, presumably in support of the motion, the debtors also filed an amended petition, amended Exhibits D, amended Schedules A through J, an amended Statement of Financial Affairs, an amended Rule 2016(b) statement, an amended Form 22C, and an amended address list, with verification. Each page of those documents is stamped "Amended." However, none of those documents is signed by the debtors, as required by Fed. R. Bankr. P. 1008, and

the amended petition and amended Rule 2016(b) statement are not signed by the debtors' attorney. As a result, those documents will be considered stricken from the record, and will be of no effect in this case.

As a result, the court's order sustaining the trustee's objection to exemptions stands, and at this point, none of the debtors' assets are exempt. According to the trustee, the proposed plan fails the liquidation test. For this reason, the court intends to deny the motion. The court need not reach the other issues raised by the trustee at this time, except to note, with the trustee, that he has raised three of those issues previously, but the debtors have not addressed them. Those three objections appear valid to the court; the debtors would be well-advised to address them with any subsequent plan. Accordingly, the motion will be denied by minute order. No appearance is necessary.

30. 13-91304-D-13 PABLO QUINONES
JAD-1

MOTION TO SELL
4-17-14 [25]

31. 14-90232-D-13 CARLA TURNER
RDG-3

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE RUSSELL D.
GREER
4-16-14 [30]

32. 14-90545-D-13 THOMAS HOLDEN

MOTION TO EXTEND AUTOMATIC STAY
MOTION TO IMPOSE AUTOMATIC STAY
4-15-14 [6]

Final ruling:

This case was dismissed on April 28, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

33. 13-90863-D-13 LEONCIO ALVARADO MOTION FOR ORDER ALLOWING
TOG-10 DEBTOR UNTIL MAY 25, 2014 TO
BECOME CURRENT ON PLAN PAYMENTS
4-21-14 [97]
34. 12-90664-D-13 CAIN ZUNIGA AND ROSEMARY MOTION TO APPROVE LOAN
CJY-2 SALINAS MODIFICATION
4-21-14 [32]
35. 14-90266-D-13 CAROLINE CLINK-CRAWFORD OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
4-16-14 [19]
36. 09-94299-D-13 DARREL WILLIAMS AND MOTION TO INCUR DEBT
JCK-4 CHERYL PETERS 4-22-14 [75]