

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 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.	15-28909-D-13	WESLEY OBERMAN	MOTION TO CONFIRM PLAN
	SJS-2		5-26-16 [76]

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 referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

2. 15-29611-D-13 ANDREW/SHELLYN MOULYN MOTION TO CONFIRM PLAN
RS-3 5-31-16 [57]

3. 16-22411-D-13 PABLO AHUMADA OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
6-2-16 [30]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The basis of the objection is that the debtor failed to file a spousal waiver to allow him to use the exemptions provided by Cal. Code Civ. Proc. § 703.140(b). On June 9, 2016, the debtor filed a spousal waiver in the correct form that appears to be signed by the debtor and his spouse. As a result of the filing of the spousal waiver, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

4. 16-22212-D-13 KATINA UMPIERRE MOTION TO VALUE COLLATERAL OF
PGM-1 WELLS FARGO BANK, N.A.
6-1-16 [28]

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.

5. 15-29315-D-13 ANGELINA TORDESILLAS MOTION TO CONFIRM PLAN
FF-1 5-27-16 [35]

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 referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

6. 16-21622-D-13 TERRY/JACQUELINE THOMAS MOTION TO CONFIRM PLAN
CJY-1 5-11-16 [24]

7. 16-22336-D-13 LARRY/MICHELLE OLIVAN OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
6-2-16 [15]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. The debtors have not filed a response. The court agrees with the trustee that the debtors' failure to list the dollar amounts of their various exemption claims renders it impossible to assess whether the exemptions are properly claimed. Accordingly, the court will issue a minute order sustaining the trustee's objection. No appearance is necessary.

8. 11-41157-D-13 RAYMOND SHERBINO AND MOTION TO VALUE COLLATERAL OF
JBL-2 CHERYL SCHAAF KEYPOINT CREDIT UNION
6-13-16 [34]

Final ruling:

This is the debtors' motion to value collateral of KeyPoint Credit Union (the "Credit Union"). The motion will be denied for the following reasons. First, the moving parties failed to serve the Credit Union 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 Credit Union by certified mail at a street address with no attention line. This method was insufficient for two reasons. First, the rule requires that service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, such as the Credit Union, be made by first-class mail, not certified mail. See preamble to Fed. R. Bankr. P. 7004(b). (It may be determined from the FDIC's website that the Credit Union is not an FDIC-insured institution.) Second, the rule requires that service on a corporation, partnership, or other unincorporated association be made to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there was no attention line.

Second, the moving parties have failed to meet their burden of demonstrating the replacement value of the vehicle. Pursuant to § 506(a)(2) of the Bankruptcy Code, a secured claim is to be valued based on the replacement value of the collateral as of the petition date. For property acquired for personal, family, or household purposes, "replacement value" means the price a retail merchant would charge for property of the same kind considering the age and condition of the debtors' property. Here, the debtors valued their vehicle at \$18,175 based on a Kelley Blue Book printout showing the private party value of a similar vehicle, which is not the same as the price a retail merchant would charge. As the debtors

have provided no evidence of the replacement value of the vehicle, they have failed to satisfy their burden of proof. In the event the debtors file another motion to value the secured claim, they will need to submit admissible evidence as to the price a retail merchant would have charged for a vehicle of the same kind, considering the age and condition of the debtors' vehicle, as of the petition date.

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

9. 16-20059-D-13 LEY NGAR
RWF-1

MOTION TO CONFIRM PLAN
5-18-16 [27]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the debtor failed to serve the party listed on the debtor's Schedule G - the other party to a business lease proposed to be assumed through the plan, and failed to serve an individual listed on the debtor's Schedule H as a co-debtor on a \$20,000 debt. Thus, the debtor 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 Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes a party to an unexpired lease with the debtor and an individual who is a co-debtor with the debtor. Pursuant to Fed. R. Bankr. P. 1007(a)(1), the debtor was required to include those parties on the master address list; the debtor included the lessor at an obviously incomplete address and failed to include the co-debtor at all. Thus, those parties have never been given notice of this case.

The debtor listed and served the lessor as "MGR, LLC, San Jose, CA 00000," with no street address and an obviously incorrect zip code. This is the debtor's landlord on a business lease on which, according to the plan, the debtor is current. Thus, it appears the debtor has the landlord's complete address. The co-debtor is listed on Schedule H as "Andrea Phung, WA 00000." There is no evidence the debtor does not have a last known address for this party.

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

10. 16-21469-D-13 PETER/SUSAN STREBECK
MKM-3

MOTION TO CONFIRM PLAN
5-18-16 [35]

11. 15-21770-D-13 SHIRLEY THURMAN
CJY-2

MOTION TO MODIFY PLAN
5-26-16 [43]

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 referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

12. 16-21783-D-13 HECTOR PEREZ
BSH-1

MOTION TO CONFIRM PLAN
5-24-16 [40]

13. 14-24389-D-13 ROSYLIND JASPER
SJS-1

MOTION TO APPROVE LOAN
MODIFICATION
6-9-16 [26]

Final ruling:

This is the debtor's motion to approve a loan modification that, as the trustee points out in opposition, would result in the debtor having additional income of \$396 per month. The debtor has, however, failed to serve any of the creditors in this case except the creditor whose loan modification is the subject of the motion. Because the proposed loan modification would have an effect on all creditors, and because the debtor failed to serve all creditors, the motion will be denied.

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

14. 11-31094-D-13 VAN/KIMBERLY BLADES
CJY-1

MOTION TO MODIFY PLAN
5-25-16 [111]

Final ruling:

This is the debtors' motion to confirm a second modified chapter 13 plan. On June 21, 2016, the debtors filed a third modified plan and a motion to confirm it, set for hearing on July 26, 2016. As a result of the filing of the third modified plan, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

15.	16-22212-D-13 RDG-2	KATINA UMPIERRE	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 6-2-16 [34]
16.	16-21825-D-13 RDG-1	JUAN/NADINE MORGA	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-23-16 [27]
17.	16-21825-D-13 JAR-1	JUAN/NADINE MORGA	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BBCN BANK 5-25-16 [30]
18.	11-30939-D-13 CJY-1	FREDRICK/HEIDI MEZENSKI	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA 6-21-16 [45]

19. 15-28869-D-13 JOSE/ARACELY RAMIREZ
TOG-3

CONTINUED MOTION TO CONFIRM
PLAN
4-16-16 [41]

20. 15-26176-D-13 CARLTON RANDLE AND
CATHERINE DENOS

CONTINUED ORDER TO SHOW CAUSE
6-1-16 [58]