

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

July 19, 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.	16-90300-D-13	CRAYTON BOYER	MOTION TO VALUE COLLATERAL OF
	MSN-1		BELL FINANCIAL, LLC
			6-6-16 [14]

Final ruling:

This is the debtor's motion to value collateral of Bell Financial, LLC ("Bell"). The motion will be denied because the moving party failed to serve Bell in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Bell (1) to the attention of Agent for Service of Process; Vic Pectol; and (2) by certified mail to the attention of a named president and CEO. The first method was insufficient because Vic Pectol is listed by the California Secretary of State's office as agent for service of process of Bell Financial, Limited Liability Company, an entity that has forfeited its charter or its right to do business in the State of California. Given the address listed with the Secretary of State and the address listed on Bell's proof of claim, it is not clear that Bell Financial, Limited Liability Company is the entity that holds the secured claim at issue in this motion, but even if it is, service on a forfeited corporation through its former agent for service of process is not sufficient. See Cal. Code Civ. Proc. 416.20. The second method was insufficient

because service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, such as Bell, must be by first-class mail rather than certified mail. See preamble to Fed. R. Bankr. P. 7004(b).

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

2.	16-90210-D-13	ANTHONY/TONYA BENTULAN	MOTION TO CONFIRM PLAN
	CJY-1		5-30-16 [33]

3.	16-90227-D-13	NICHOLAS MCFADDEN	MOTION TO CONFIRM PLAN
	PLG-2		6-6-16 [44]

4.	11-92830-D-13	DANIEL/GAIL POLLARD	MOTION TO MODIFY PLAN
	TOG-3		5-23-16 [79]

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.

5. 12-91531-D-13 KATHERINE LUCE MOTION FOR RELIEF FROM
DJD-1 AUTOMATIC STAY
SETERUS, INC. VS. 6-12-16 [52]

Final ruling:

This matter is resolved without oral argument. This is Seterus, Inc.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the creditor's interest in the property is not adequately protected. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

6. 15-91139-D-13 MICHAEL/PATRICIA SILVA MOTION TO MODIFY PLAN
MC-1 6-2-16 [37]

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.

7. 16-90340-D-13 RAMIRO/MARTA LUJAN MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
CREDIT ACCEPTANCE CORPORATION VS. 6-13-16 [14]

Final ruling:

This matter is resolved without oral argument. This is Credit Acceptance Corporation's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

8. 16-90162-D-13 KEVIN/NICOLE ARROUZET CONTINUED OBJECTION TO
MDE-1 CONFIRMATION OF PLAN BY U.S.
BANK, N.A.
4-15-16 [18]

9. 16-90167-D-13 LORENZO OJEDA
CAS-2

MOTION TO CONFIRM PLAN
5-25-16 [79]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The moving party failed to serve the Stanislaus County Tax Collector, added to the debtor's Schedule D by amendment filed May 24, 2016 as being owed \$8,300 (and who has now filed a proof of claim for \$8,337.98), at all; and (2) the moving party failed to serve Ramon Chavez Hernandez, listed on the debtor's Schedule G, at all. 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.

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

10. 14-91069-D-13 CHRISTOPHER/ANGELA
RDG-4 MAYFIELD

OBJECTION TO DEBTORS' CLAIM OF
EXEMPTIONS
6-2-16 [51]

11. 14-90973-D-13 ALVARINO/SHIRLEY LEONARDO
SJS-1

MOTION TO MODIFY PLAN
5-24-16 [61]

12. 16-90075-D-13 DANIEL JAMES AND PAULA
EAT-2 FOX-JAMES

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
6-16-16 [50]

Final ruling:

This hearing has been continued to August 16, 2016 at 10:00 a.m. by order approving a stipulation of the parties. No appearance is necessary on July 19, 2016.

13. 11-91578-D-13 CARY SCOTT
RAC-2

MOTION TO APPROVE LOAN
MODIFICATION
6-15-16 [58]

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. Moving party is to submit an appropriate order. No appearance is necessary.

14. 16-90189-D-13 RENDELL AGBAYANI
TOG-1

MOTION TO CONFIRM PLAN
5-18-16 [22]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

15. 13-91898-D-13 ROY/DORENE CORSON
BSH-7

MOTION TO MODIFY PLAN
5-25-16 [83]

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.

16. 11-91209-D-13 MARTHA ARMENTA
CJY-1

MOTION TO VALUE COLLATERAL OF
JP MORGAN CHASE BANK, N.A.
6-30-16 [47]

17. 13-90939-D-13 KENT GONZALES MOTION TO APPROVE LOAN
CJY-3 MODIFICATION
6-30-16 [43]
18. 16-90441-D-13 JAIME/EVELIA MARTINEZ CONTINUED MOTION FOR RELIEF
PEE-1 FROM AUTOMATIC STAY
RAYMOND GREER CONSTRUCTION 6-3-16 [9]
CO., INC. VS.
19. 16-90545-D-13 MICHELLE TETENS MOTION TO EXTEND AUTOMATIC STAY
CJY-1 6-30-16 [9]
20. 14-91471-D-13 MORIS/KATRINE KOOCHOF MOTION TO INCUR DEBT
BSH-6 6-29-16 [81]

Tentative ruling:

This is the debtors' motion to incur debt for the purchase of a residence. The debtors originally filed an ex parte motion to incur the debt, which they served on the trustee (only). Five days later, the debtors filed this motion, which they set for hearing and which they also served on the trustee. (At the same time, they filed a notice of withdrawal of their ex parte motion.) The debtors did not serve any creditors. The court's local rule provides for approval on an ex parte basis of a motion to incur debt to purchase a residence if the trustee's written consent is filed with or as part of the motion. LBR 3015-1(i)(1)(B). The debtors' ex parte motion was not accompanied by the trustee's written consent, which is apparently the reason the debtors withdrew the ex parte motion and filed this noticed motion.

However, the rule provides that if the trustee will not give his consent, the debtor shall file a motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the motion for hearing. LBR 3015-1(i)(1)(E). There have been no requests for special notice filed in this case; however, the court finds that because the trustee did not consent to the ex parte motion, notice should have been given to all creditors. There appears nothing to be gained by setting the motion for hearing and serving it on the trustee only when the trustee would not sign off on the motion in the first place. The court intends to continue the hearing and require the debtors to file a notice of continued hearing and serve it, together with the motion and supporting documents, on all creditors.

The court will hear the matter.

21. 16-90371-D-13 MATTHEW METTLER
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-27-16 [11]

22. 16-90388-D-13 CRISTINA ZAMUDIO
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-27-16 [16]