

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

August 23, 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.	16-21303-D-13	JOHN/SHERRY SCHWALL	MOTION TO CONFIRM PLAN
	PGM-2		7-12-16 [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.

2. 14-23906-D-13 JOHN/CATHY RAY
PGM-2

CONTINUED MOTION FOR
COMPENSATION FOR PETER G.
MACALUSO, DEBTORS' ATTORNEY
6-15-16 [37]

Tentative ruling:

This is the application of the debtors' counsel for additional attorney's fees. The hearing was continued to permit the applicant to correct a service defect and to provide a declaration of the debtors as to their position on the application. Specifically, the applicant failed to serve the Social Security Administration, by far the largest creditor in the case and (according to the debtors' reply) the only one remaining to be paid through the debtors' confirmed plan, at its address on the Roster of Governmental Agencies or through the attorney who represented it in the adversary proceeding that generated the fees sought in the application.

As of this date, the applicant has not served the Social Security Administration or its attorney and has not filed a declaration of the debtors. For these reasons, the motion will be denied by minute order. The court will hear the matter.

3. 16-23719-D-13 ALVARO MONCADA AND CARMEN MORAGA
MLP-1
MOTION TO VALUE COLLATERAL OF
FIVE LAKES AGENCY, INC.
7-26-16 [14]

Final ruling:

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

4. 14-21631-D-13 MICHAEL/NANNETTE FARIA
HWW-2
MOTION TO MODIFY PLAN
6-30-16 [71]

Tentative ruling:

This is the debtors' objection to the claim of the San Joaquin County Tax Collector (the "County"), Claim No. 9. The County has filed opposition. For the following reasons, the objection will be sustained.

The debtors object to the claim on the ground it was not timely filed. The claims bar date for governmental units in this case was August 20, 2014. The County did not file its proof of claim until September 2, 2014. The County makes several arguments. First, it states, "The claims deadline does not apply to County's claim because County is a secured creditor that is not required to file a proof of claim." County's Response, DN 81, at 2:24-25. Citing case law for the proposition that liens pass through bankruptcy unaffected, the County concludes "Creditor has the option to look to its lien for satisfaction as the sole means of satisfying the debt." Id. at 4:9-11.

The court has not been asked by the moving parties to make any determination as to remedies that may be available to the County except with respect to its proof of claim. Thus, the court will make no such determinations. It is clear, however, that the County's proof of claim was not timely filed. Under applicable rules, the court lacks discretion to allow the late-filed claim. Pursuant to Fed. R. Bankr. P. 9006(b)(3), the court may enlarge the time for taking action under Fed. R. Bankr. P. 3002(c) (time for filing proofs of claim) only to the extent and under the conditions stated in that rule. Rule 3002(c), in turn, provides for the allowance of late-filed claims in a variety of circumstances, none of which is present here.

Instead, in the circumstances presented here, the court lacks discretion to enlarge the time for filing claims. Gardenhire v. United States Internal Revenue Service (In re Gardenhire), 209 F.3d 1145, 1148 (9th Cir. 2000) ("a bankruptcy court lacks equitable discretion to enlarge the time to file proofs of claim; rather, it may only enlarge the filing time pursuant to the exceptions set forth in the Bankruptcy Code and Rules"); Coastal Alaska Lines, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.), 920 F.2d 1428, 1432-33 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists"); Spokane Law Enforcement Fed. Credit Union v. Barker (In re Barker), 2014 Bankr. LEXIS 1233, *8 (9th Cir. BAP 2014) ["the bankruptcy court lacks any equitable power to enlarge the time for filing a proof of claim unless one of the six situations in Rule 3002(c) exists."].

Despite the County's contentions that the debtors will not be prejudiced by allowance of the claim, that the County will be prejudiced by disallowance because of the debtors' delay in filing this objection 22 months after the claim was filed, and that the claim is properly filed and completed, and therefore, entitled to prima facie validity, the claim was filed late and the court has no discretion to allow it.

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

6. 16-21941-D-13 DOLAN PARKER MOTION TO CONFIRM PLAN
GMW-3 7-6-16 [56]

Final ruling:

This case was dismissed on August 12, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

7. 16-23241-D-13 RAYMOND HETZLER OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
7-18-16 [40]

Final ruling:

This case was dismissed on July 27, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

8. 16-21047-D-13 FABIAN PELAYES MOTION TO CONFIRM PLAN
PLL-3 7-11-16 [64]

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.

9. 16-23647-D-13 GINA CRONIN MOTION TO VALUE COLLATERAL OF
DCJ-2 READYCAP LENDING, LLC
7-28-16 [33]

10. 11-47463-D-13 KEVIN/PHYLLIS MCNAIR
MSN-1

MOTION TO VALUE COLLATERAL OF
DITECH FINANCIAL, LLC
7-12-16 [125]

Final ruling:

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

11. 16-23400-D-13 DIANE VALLES
BSH-1

MOTION TO VALUE COLLATERAL OF
SPRINGLEAF FINANCIAL
8-3-16 [20]

12. 16-23400-D-13 DIANE VALLES
BSH-2

MOTION TO VALUE COLLATERAL OF
DEUTSCHE BANK NATIONAL TRUST
COMPANY
8-3-16 [25]

Tentative ruling:

This is the debtor's motion to value collateral of Deutsche Bank National Trust Company ("Deutsche Bank"); namely, a second position deed of trust against the debtor's residence. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, if the Bank appears at the hearing, the court will hear the matter. However, if Deutsche Bank does not appear at the hearing, the motion will be denied because the moving party failed to serve Deutsche Bank through the attorney who has appeared for it in this case (see DN 16) or the attorneys who have filed a request for special notice on its behalf (see DN 10). In fact, the moving party failed to serve Deutsche Bank itself at all. Instead, it served Deutsche Bank only "c/o Specialized Loan Servicing LLC." Specialized Loan Servicing LLC is apparently Deutsche Bank's loan servicer. However, service on a corporation or an FDIC-insured institution through its loan servicer is not a proper method of service. See Fed. R. Bankr. P. 7004(b)(3) and (h).

As a result of this service defect, the motion will be denied unless Deutsche Bank makes an appearance at the hearing. If Deutsche Bank does make an appearance, the court will entertain opposition and consider setting a briefing schedule, as notice was given pursuant to LBR 9014-1(f)(2).

13. 16-23400-D-13 DIANE VALLES
ETL-1
CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
DEUTSCHE BANK NATIONAL TRUST
COMPANY
7-19-16 [16]
14. 16-23803-D-13 JUSTIN HERRMANN AND
RDG-1 CHRISTINE KYDD-HERRMANN
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-1-16 [16]
15. 16-23710-D-13 HAROLD/YVONNE SMITH
RDG-1
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-1-16 [14]
16. 16-23733-D-13 BELINDA SMITH
RDG-2
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-1-16 [22]

17. 16-23647-D-13 GINA CRONIN
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-1-16 [37]

18. 16-24968-D-13 SHERON NOR WOO
CLH-1

MOTION TO EXTEND/CONTINUE
AUTOMATIC STAY
8-3-16 [8]