

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

August 25, 2015 at 10:00 a.m.

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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.

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1.	14-32400-D-13 RDG-6	TINA JOHNSON	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 7-20-15 [94]
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**Final ruling:**

This case was dismissed on July 27, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

2.	15-25100-D-13 LRR-1	FRANCISCO OLAYO	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 6-30-15 [8]
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**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 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. 12-25501-D-13 JAMES SELLERS  
HWW-1

MOTION TO MODIFY PLAN  
7-20-15 [40]

**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. 14-29812-D-13 ANDRE COOPER AND KIMBERLY  
WMR-4 GILLIAM

MOTION TO VALUE COLLATERAL OF  
WEISFIELD JEWELERS/QUANTUM  
GROUP, LLC  
7-29-15 [85]

**Final ruling:**

This is the debtors' motion to value collateral of a creditor identified as Weisfield Jewelers/Quantum Group LLC for Sadino Funding LLC ("Weisfield"). The motion will be denied for the following reasons. First, the moving parties failed to serve Weisfield in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Weisfield at a post office box address, "Attn: Bankruptcy," whereas service on a corporation, partnership, or other unincorporated association must be to the attention of an officer, managing or general agent, or agent for service of process. Rule 7004(b)(3). The moving parties also served Quantum Group LLC as agent for Sadino Funding LLC, which is the entity that filed the proof of claim referred to below, at a post office box address with no attention line.

Second, the moving papers do not provide sufficient information for Weisfield to determine whether to oppose the motion or for the court to determine whether to grant it. The motion states that the debtors seek to value "various pieces of jewelry" at \$3,600. In his supporting declaration, debtor Andre Bruce Cooper identifies the property to be valued only as "the Collateral" and "the jewelry." He testifies: "I am informed that the jewelry was purchased in 2009 and is worth not more than \$3600. Were I to sell the jewelry now, I would be lucky to realize half of the retail price." There are several problems with this declaration. First, the court has no idea what items of jewelry the debtors seek to value, and thus, cannot assess the reasonableness of the debtors' opinion of value. Second, on their Schedule B filed in this case, the debtors listed all of their jewelry as having a total value of \$300. The debtor's current testimony that their jewelry that is collateral for their debt to Weisfield, which may or may not be all of their jewelry, is worth not more than \$3,600. The debtors offer no explanation for this discrepancy.

Third, neither what the jewelry "is worth" nor what the debtor could sell it for is the standard the court is to apply when valuing personal property acquired for personal, family, or household purposes. Instead, the court is to consider the property's "replacement value." Bankruptcy Code § 506(a)(2). "Replacement value" means "the price a retail merchant would charge for property of that kind

considering the age and condition of the property at the time value is determined." Id. If the debtor's testimony is accurate and he would be lucky to sell the jewelry for half its retail price, and if the jewelry is worth not more than \$3,600, then logically, the retail price is not more than \$7,200 and the debtors have not shown they are entitled to have the jewelry valued at half that amount. Fourth, the court questions the debtor's familiarity with the jewelry he is purporting to value. He states he is informed the jewelry was purchased in 2009, whereas the only proof of claim on file in this case that purports to be secured by jewelry, Claim No. 8, has as attachments copies of receipts for jewelry purchases dated in May, June, and July of 2012. Thus, if it is Claim No. 8 the debtors are seeking to value, it appears the debtor is offering his opinion of value of different jewelry entirely.

Finally, it is not clear that the moving papers properly identify the creditor whose claim the debtors seek to value. The motion states they seek to limit "Weisfield Jewelers/Quantum Group LLC for Sadino Funding LLC's claim" to \$3,600 whereas, although the proof of claim just referred to names Sadino Funding LLC as the current creditor, it refers to the original creditor as Sterling Jewelers Inc. and to the merchant's name as Kay Jewelers.

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

5. 14-31015-D-13 ROBERT/DANIELLE SIMPSON MOTION TO MODIFY PLAN  
LRR-2 6-30-15 [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 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.

6. 14-32216-D-13 ERIC BARBARY AND MARIAN MOTION TO CONFIRM PLAN  
CAH-2 CORK-BARBARY 7-13-15 [44]

**Final ruling:**

This case was dismissed on July 13, 2015. As a result the motion will be denied by minute order as moot. No appearance is necessary.

7. 14-31517-D-13 RICK/DENISE HUBER MOTION TO CONFIRM PLAN  
PK-2 7-3-15 [59]

**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.

8. 15-24119-D-13 BARBARA/KASEY CORDOZA MOTION TO VALUE COLLATERAL OF  
JM-1 SUN TRUST MORTGAGE  
6-17-15 [9]

**Final ruling:**

This is the debtors' motion to value collateral of Sun Trust Mortgage ("Sun Trust"). The motion will be denied because the moving parties failed to serve Sun Trust in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Sun Trust at two different post office box addresses with no attention line, and by certified and regular mail at a third post office box address to the attention of the Bankruptcy Department. All of these methods were insufficient because service on a corporation must be to the attention of an officer, managing or general agent, or agent for service of process. Rule 7004(b)(3).

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

9. 15-24623-D-13 ESTELLE YANCEY OBJECTION TO CONFIRMATION OF  
KAZ-2 PLAN BY DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
7-29-15 [34]

**Final ruling:**

This case was dismissed on July 30, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

10. 15-24623-D-13 ESTELLE YANCEY OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
7-28-15 [26]

**Final ruling:**

This case was dismissed on July 30, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

11. 15-20427-D-13 OSCAR WILLS MOTION TO CONFIRM PLAN  
HLG-5 7-9-15 [78]

12. 11-49132-D-13 FRANCISCO/DONNA MARTINEZ MOTION FOR RELIEF FROM  
MDE-1 AUTOMATIC STAY AND/OR MOTION  
NATIONSTAR MORTGAGE, LLC VS. FOR ADEQUATE PROTECTION  
7-16-15 [63]

**Final ruling:**

This matter is resolved without oral argument. This is Nationstar Mortgage, LLC'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 subject 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.

13. 14-31634-D-13 WILLARD/PATRICIA MAYNARD MOTION TO MODIFY PLAN  
JCK-3 7-17-15 [49]

14. 14-31634-D-13 WILLARD/PATRICIA MAYNARD MOTION TO VALUE COLLATERAL OF  
JCK-4 DON ROBERTO JEWELERS, INC.  
7-20-15 [54]

**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 the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

15. 15-21534-D-13 ROXANA NAJERA MOTION TO CONFIRM PLAN  
CAH-1 7-13-15 [37]

16. 15-24334-D-13 RICHARD GOVIA  
RDG-1

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
7-17-15 [36]

**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 July 27, 2015, the debtor filed a spousal waiver in the correct form 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.

17. 15-25443-D-13 SALVADOR MONTES LEDEZMA  
RNE-1 AND ROSA MONTES

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA  
7-13-15 [8]

**Final ruling:**

This is the debtors' motion to value collateral of Bank of America securing a loan serviced by Real Time Resolutions, Inc. (the "Bank"). The motion will be denied for the following reasons. First, the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank by first-class mail at a post office box address, "Attn: Correspondence," whereas an FDIC-insured institution such as the Bank must be served by certified mail to the attention of an officer (and only an officer). Rule 7004(h). The moving parties also served Real Time Resolutions; however, the motion indicates clearly the creditor is the Bank and Real Time Resolutions is only the servicer. Further, even if service on Real Time Resolutions were sufficient, the moving parties failed to serve that entity in compliance with Fed. R. Bankr. P. 7004(b)(3), as also required by Fed. R. Bankr. P. 9014(b). The moving parties served Real Time Resolutions (1) by first-class mail and certified mail at a street address, with no attention line; (2) by certified mail to the attention of a named CEO; (3) by certified mail to the attention of a named president and COO; and (4) by certified mail to the attention of a named "agent" at the address of its corporate agent for service of process, C T Corporation System, but addressed to the attention of a named agent who is not its agent for service of process.

The first method was insufficient because service on a corporation must be to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there was no attention line. All of these methods were insufficient because service on a corporation that is not an FDIC-insured institution, such as Real Time Resolutions, must be by first-class mail, not certified mail. See preamble to Rule 7004(b). The fourth method was insufficient for the further reason that the agent named in the attention line is not the agent for service of process of Real Time Resolutions.

Second, the notice of hearing incorrectly states the requirements for the filing and service of opposition. The notice first states that LBR 9014-1(f)(2) prescribes the procedures to be followed. When a motion is noticed pursuant to that

rule, no written opposition is required. Having cited that rule, however, the notice then states that "any objection to the requested relief or a request for a hearing on the matter must be filed and served upon the initiating party within 28 days of mailing of this notice." The notice adds that "[i]f the request for hearing or objection is timely made, the debtor will give at least 14 days written notice of hearing to the objecting or requesting party, and to any trustee or committee appointed in the case." Assuming the moving parties intended to give notice pursuant to LBR 9014-1(f)(1), not (f)(2), those are not the proper procedures for the filing and service of opposition to a motion noticed pursuant to LBR 9014-1(f)(1). Further, a notice that purports to require the filing of written opposition must include the cautionary language required by LBR 9014-1(d)(4); this one did not.

Finally, the moving parties filed an amended notice of hearing by which they changed the date of the hearing, but there is no proof of service of the amended notice.

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

18. 15-25443-D-13 SALVADOR MONTES LEDEZMA MOTION TO CONFIRM PLAN  
RNE-2 AND ROSA MONTES 7-14-15 [16]

**Final ruling:**

This is the debtors' motion to confirm a proposed chapter 13 plan. The motion will be denied for the following reasons. First, the moving parties failed to serve the IRS and the U.S. Dept. of Education at their addresses on the Roster of Governmental Agencies, as required by LBR 2002-1. Second, the notice of hearing incorrectly states that opposition should be "filed" with the trustee (albeit at the address of the clerk's office) and the United States Trustee. The notice also states that if a party wishes to oppose confirmation, he or she must file an opposition "to be heard in the [bankruptcy court] at 501 I Street Room 7-500 Sacramento California 95814," whereas that is the location of the office of the United States Trustee.

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

19. 15-23544-D-13 FRANCISCO MORA OBJECTION TO DEBTOR'S CLAIM OF  
RDG-2 EXEMPTIONS  
7-21-15 [26]

**Final ruling:**

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response has been filed. The trustee's objection to the debtor's claim of exemptions is supported by the record. The court will sustain the trustee's objection to the debtor's claim of exemptions. Moving party is to submit an appropriate order. No appearance is necessary.

20. 11-25250-D-13 CELESTE/JAMES BURNS  
CLH-2

MOTION TO MODIFY PLAN  
7-21-15 [55]

21. 15-24653-D-13 CHERYL HOWE-ADKINS  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
7-29-15 [24]

**Tentative ruling:**

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. The proof of service indicates the debtor was served at an address that included a typographical error. Thus, in the event the debtor does not appear at the hearing, the court will continue the hearing to permit the trustee to file a notice of continued hearing and serve it, together with the objection, on the debtor at her address of record.

The court will hear the matter.

22. 15-21854-D-13 CEFERINO/XIOMARA GONZALES  
MSM-2

MOTION TO SUBSTITUTE COLLATERAL  
7-28-15 [30]

**Tentative ruling:**

This is the debtors' motion to substitute collateral for a 2013 Ford Focus (the "vehicle") that is the collateral of Ford Motor Credit ("Ford"). The motion cites Bankruptcy Code § 363, stating that the debtors seek to use insurance proceeds resulting from the damage of the vehicle in a collision, proceeds that are Ford's cash collateral, to purchase a replacement vehicle, Ford's lien to attach to the replacement vehicle. The court intends to deny the motion because the moving parties failed to serve Ford in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 4001(b)(1)(A) and 9014(b). The moving parties served Ford at two different post office box addresses but with no attention line, whereas the rule requires that service on a corporation be made to the attention of an officer, managing or general agent, or agent for service of process.

In the alternative, the court will continue the hearing to allow the moving parties to serve Ford in accordance with Rule 7004(b)(3). In the event the moving parties utilize this alternative, and if they give notice of the continued hearing pursuant to LBR 9014-1(f)(1), the notice must include the cautionary language required by LBR 9014-1(d)(4).

The court will hear the matter.

23. 14-26159-D-13 ELIZABETH MIDDLEKAUFF MOTION TO CONFIRM PLAN  
MG-5 6-26-15 [119]

24. 14-29877-D-13 JOHN/KELLY COSTAMAGNA CONTINUED MOTION TO SELL  
CLH-5 7-11-15 [87]

25. 15-21280-D-13 ERNESTO SANCHEZ AND DIANA MOTION TO CONFIRM PLAN  
JDP-1 CORTINAS 7-13-15 [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 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.

26. 14-28986-D-13 MARGARITA GUTIERREZ MOTION TO CONFIRM PLAN  
PGM-3 7-14-15 [140]

**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.

27. 15-20091-D-13 SONIA MCDADE-THREADGILL MOTION TO CONFIRM PLAN  
GMW-4 7-6-15 [82]

**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.

28. 10-35209-D-13 PATRICK/KAREN PETTIPIECE MOTION TO VALUE COLLATERAL OF  
JDP-1 JP MORGAN CHASE BANK, N.A.  
8-3-15 [119]

29. 14-29812-D-13 ANDRE COOPER AND KIMBERLY AMENDED MOTION TO MODIFY PLAN  
WMR-1 GILLIAM 7-23-15 [84]

**Final ruling:**

This is the debtors' "amended" motion to confirm a second modified chapter 13 plan, filed July 23, 2015, as DN 84. The motion will be removed from calendar for the following reasons.

The debtors filed exactly the same motion on June 28, 2015, as DN 74. The motion filed that day was accompanied by a notice and supporting declaration and exhibits. The motion, which was set for hearing on July 14, 2015, was opposed by the trustee on the grounds that (1) it was set for hearing without adequate notice; and (2) it provided for Quantum3 Group, LLC as a Class 2 claim and proposed to pay the value of the collateral securing the claim, but the court had not entered an order valuing the collateral. The motion was denied by minute order dated July 15, 2015. The motion was denied based on a final ruling, which stated that the moving parties had given only 20 days' notice of the hearing and had failed to file a motion to value the collateral of Quantum3 Group LLC.

A duplicate of the motion was filed eight days after the motion was denied. The two motions - those filed June 28 and July 23 - are identical in every way - they have the same title (both are entitled "amended" motion), the same docket control number (WMR-1), the same hearing date and time (July 14, 2015), the same signature date (June 24, 2015), and the same text. When the debtors re-filed the motion, on July 23, 2015, they did not file a notice of hearing, a supporting declaration, or supporting exhibits, as they had done when they originally filed the

motion, on June 28, 2015. The only document filed on July 23, 2015 was the duplicate copy of the motion itself. There is no evidence of service of anything on July 23, 2015.

On August 6, 2015, the debtors filed an "Amended Notice," bearing the same docket control number as the motion originally filed on June 28, 2015 (WMR-1), but changing the hearing date to August 25, 2015. Also on August 6, 2015, the debtors filed a certificate of service, in which the declarant stated that the "notice of hearing," motion, second modified plan, declaration, response to the trustee's opposition, and amended Schedules I and J were served on July 20, 2015.

This matter will be removed from calendar because the motion, docket control number WMR-1, has already been denied - by minute order dated July 15, 2015. There is nothing in the federal rules or the local rules that would permit a motion that has been denied to be re-filed, in identical form with nothing distinguishing it from the motion that has been denied. However, even if the motion had not already been denied, the court would deny the motion as re-filed on July 23, 2015 because there is no evidence the amended notice, which is the only document that referenced an August 25, 2015 hearing date, was ever served.

The matter will be removed from calendar. No appearance is necessary.

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| 30. | 10-41827-D-13<br>JDP-1 | LARRY/SHERINE RICHTER | MOTION TO SELL<br>8-4-15 [55]                       |
| 31. | 13-25931-D-13<br>JCK-1 | JASON/LANNEA SPENCE   | MOTION TO INCUR DEBT<br>8-7-15 [25]                 |
| 32. | 14-29877-D-13<br>CLH-4 | JOHN/KELLY COSTAMAGNA | CONTINUED MOTION TO CONFIRM<br>PLAN<br>6-26-15 [65] |

33. 14-29877-D-13 JOHN/KELLY COSTAMAGNA CONTINUED MOTION FOR RELIEF  
NEU-2 FROM AUTOMATIC STAY  
FARMERS AND MERCHANTS BANK 6-4-15 [52]  
OF CENTRAL CALIFORNIA VS.
34. 14-29877-D-13 JOHN/KELLY COSTAMAGNA CONTINUED MOTION TO DISMISS  
NEU-3 CASE AND/OR MOTION TO CONVERT  
CASE FROM CHAPTER 13 TO CHAPTER  
7  
6-30-15 [70]