

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil

Bankruptcy Judge

Sacramento, California

August 29, 2017 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.	16-28306-D-13	GABRIEL SALAZAR-PENA	MOTION TO CONFIRM PLAN
	TOG-3		7-11-17 [69]

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. 16-23710-D-13 HAROLD/YVONNE SMITH
JCK-2

MOTION TO MODIFY PLAN
7-20-17 [38]

3. 17-21913-D-13 ROBERT/JENNIFER WILLIAMS
AOE-4

MOTION TO VALUE COLLATERAL OF
BANK OF NEW YORK MELLON AND
CALHFA MORTGAGE ASSISTANCE
CORPORATION
7-7-17 [47]

Final ruling:

This is the debtors' motion to value the collateral of the Bank of New York Mellon (the "Bank") and CalHFA Mortgage Assistance Corporation ("CalHFA"), consisting of second and third deeds of trust, respectively, against the debtors' residence. The motion will be denied for the following reasons. First, the moving parties failed to serve either the Bank or CalHFA at all. The moving parties utilized a PACER matrix printed April 11, 2017 for service of the motion, whereas they did not add the Bank or CalHFA to their Schedule D until July 25, 2017; thus, those creditors did not appear on the April 11, 2017 PACER matrix and were not served. (Further, although the moving parties filed an amended master address list on July 25, 2017, the same day they filed their amended Schedule D, they did not include the Bank or CalHFA on the amended master address list, instead listing only the two creditors that had been listed on their original master address list.) For future reference, counsel is reminded that motions to value collateral are required to be served in the manner described in the appropriate subsection of Fed. R. Bankr. P. 7004. Fed. R. Bankr. P. 9014(b).

Second, the motion, exhibit, and proof of service were all filed as a single document, contrary to LBR 9004-1(a) and Section III(A) of the court's Revised Guidelines for the Preparation of Documents. Third, the motion and notice of hearing bear different docket control numbers, AOE-4 and AOE-5, respectively, contrary to LBR 9014-1(c)(4). Fourth, the notice contains inconsistent information - first, it states the motion is brought pursuant to LBR 9014-1(f)(2) and "you are not required to file a written opposition with the Court." But then it states, "Your opposition, if any, to the Motion[,] in addition to being filed with the Court, shall be served on the Debtors, Debtors' Counsel and the Trustee" Fifth, there is no proof of service of the amended notice of hearing, by which the date of the hearing was changed from August 16, 2017 to August 29, 2017. Finally, there is no admissible evidence establishing the factual allegations of the motion and demonstrating that the moving parties are entitled to the relief requested, as required by LBR 9014-1(d)(7). The only "evidence" is a copy of an appraisal, which is inadmissible hearsay.

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

4. 17-22627-D-13 GRACIELLA HERNANDEZ
SCF-2

MOTION TO CONFIRM PLAN
7-7-17 [47]

5. 17-22627-D-13 GRACIELLA HERNANDEZ
SCF-3

MOTION TO VALUE COLLATERAL AND
TO AVOID LIEN OF NATIONSTAR
7-7-17 [53]

Tentative ruling:

This is the debtor's motion to value collateral of Nationstar Mortgage, LLC ("Nationstar"). The motion will be denied because the moving party failed to serve Nationstar in strict compliance with Fed. R. Bankr. P. 7004(b)(3) or (h), as applicable, as required by Fed. R. Bankr. P. 9014(b). The moving party served Nationstar (1) by certified mail at a post office box address, with no attention line; and (2) by certified mail to the law firm that has filed a request for special notice in this case on behalf of the Bank of New York Mellon (the "Bank") which, according to its proof of claim, is the actual holder of the claim the debtor seeks to value. The first method was insufficient because service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, such as Nationstar, must be by first-class mail (see preamble to Rule 7004(b)) to the attention of an officer, managing or general agent, or agent for service of process (see Rule 7004(b)(3)). The second method was insufficient because the request for special notice states that it shall not constitute a waiver of the Bank's right to receive service pursuant to Fed. R. Bankr. P. 7004 and that the Bank does not authorize the law firm to act as its agent for purposes of service under Fed. R. Bankr. P. 7004. Therefore, the moving party was required to serve the Bank by certified mail to the attention of an officer. Rule 7004(h).¹

As a result of this service defect, the motion will be denied. In the alternative, the court will continue the hearing to permit the moving party to file a notice of continued hearing and serve it, together with the motion and supporting papers, in accordance with Rule 7004. The moving party is cautioned not to file amended declarations or an amended memorandum of points and authorities. Such documents filed for the sole purpose of changing the hearing date do nothing more than clutter the docket and create confusion.

The court will hear the matter.

1 Even if service on the law firm had been appropriate under Rule 7004(h), subd. (1), it should have been by first-class mail rather than certified mail. Id.

6. 17-20829-D-13 ALBERTO DELAROSA AND ORDER TO SHOW CAUSE
ESPERANZA LOREDO 8-2-17 [104]

7. 17-21930-D-13 FERGUS/KAREN MCDUGALL MOTION TO CONFIRM PLAN
JCK-5 7-7-17 [69]

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.

8. 17-23238-D-13 LAURIE CROSBY-WILSON MOTION TO CONFIRM PLAN
JCK-5 7-7-17 [51]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

9. 17-23746-D-13 RONALD BRADLEY MOTION TO CONFIRM PLAN
RK-1 7-9-17 [17]

10. 17-21547-D-13 DAVID JARRETT MOTION TO CONFIRM PLAN
HDR-1 7-10-17 [27]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party served the motion, notice, declaration, and exhibits, but not the plan itself, as required by LBR 3015-1(d)(1). (The exhibits do not include a copy of the plan.)

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

11. 17-22251-D-13 BRIAN GEGARIAN OBJECTION TO DEBTOR'S CLAIM OF
RDG-5 EXEMPTIONS
7-21-17 [64]

Final ruling:

This is the trustee's objection to the debtor's claims of exemption. On August 4, 2017, the debtor filed an amended Schedule C. As a result of the filing of the amended Schedule C, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

12. 17-21752-D-13 RICHARD/JENE ROSE SAMSON MOTION TO CONFIRM PLAN
MJD-2 7-6-17 [40]

13. 17-24052-D-13 IRAINA MCCOY OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
7-10-17 [20]

Final ruling:

This case was dismissed on July 20, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

14. 17-24658-D-13 MARCO PALMA
UST-1

MOTION TO DISMISS CASE
7-20-17 [9]

Tentative ruling:

This is the United States Trustee's motion to dismiss this case. Although there is a judgment in an earlier case barring further bankruptcy filings by the debtor without prior court authority, which judgment appears to have been violated by the filing of this case, the only relief requested in the United States Trustee's motion is dismissal of the case. As this case has already been dismissed -- on July 31, 2017 -- the court intends to deny the motion as moot. The court will hear the matter.

15. 17-23364-D-13 SHERRI TOLENTINO
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
7-10-17 [18]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response has been filed. The objection is supported by the record. The court will issue a minute order sustaining the trustee's objection to debtor's claim of exemption. No appearance is necessary.

16. 17-21469-D-13 AMY EVANS
RS-2

MOTION TO CONFIRM PLAN
7-16-17 [55]

17. 15-27278-D-13 PAUL/SHARON WILLIAMS
MJH-5

MOTION TO INCUR DEBT
7-25-17 [87]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that the trustee has withdrawn his opposition, no other 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. Moving party is to submit an appropriate order. No appearance is necessary.

18. 17-21079-D-13 CAROL/BOBBIE STEPPS MOTION TO CONFIRM PLAN
CLH-4 6-30-17 [84]

19. 17-21381-D-13 SANDRA SANDERS MOTION TO CONFIRM PLAN
PGM-1 7-13-17 [38]

20. 17-21688-D-13 ROBIN/DONA JOHNSTON MOTION TO CONFIRM PLAN
PSB-3 7-18-17 [55]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). First, the motion states that one of the reasons for the amended plan is to provide for property taxes the debtors had not been aware of when they filed this case. However, they have failed to amend their schedules or master address list to include the Tax Collector; thus, when they utilized the PACER matrix for service of this motion, it did not include the Tax Collector. Second, the debtors filed their schedules roughly a month after filing their petition (pursuant to an order extending time), but failed to file an amended master address list to add three creditors included in their Schedule E/F who were not listed on their master address list. Thus, those creditors, like the Tax Collector, were not served with this motion.

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

21. 17-22590-D-13 STEPHANIE AIROLA-SANTIAGO MOTION TO AVOID LIEN OF
CLH-2 MOKELUMNE FEDERAL CREDIT UNION
Final ruling: 7-31-17 [29]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

22. 17-21791-D-13 PATRICIA BROWN CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
5-12-17 [26]

Final ruling:

The objection has been withdrawn by moving party. Matter removed from calendar.

23. 16-27799-D-13 ROMEO PARDILLA MOTION TO MODIFY PLAN
JCK-1 6-26-17 [31]

24. 13-21348-D-13 ROBERT/KAYLA RENCH MOTION TO INCUR DEBT
JCK-4 8-7-17 [48]

25. 12-36066-D-13 MATTHEW/ANDREA CONTINUED MOTION TO INCUR DEBT
MSN-1 SCHWERTFEGER 7-31-17 [80]

26. 16-26469-D-13 LONEY/MARY TURPIN CONTINUED MOTION FOR
TAG-10 COMPENSATION BY THE LAW OFFICE
OF LAW OFFICES OF TED A.
GREENE, INC. FOR AUBREY L.
JACOBSEN, DEBTORS ATTORNEY(S)
6-29-17 [133]
27. 16-26469-D-13 LONEY/MARY TURPIN CONTINUED MOTION TO CONFIRM
TAG-9 PLAN
6-21-17 [115]
28. 16-26469-D-13 LONEY/MARY TURPIN CONTINUED MOTION TO SELL
TAG-12 7-19-17 [153]
29. 17-24680-D-13 GURJIT SIDHU MOTION FOR RELIEF FROM
HRH-1 AUTOMATIC STAY
BMO HARRIS BANK N.A. VS. BMO HARRIS BANK N.A. VS.
8-7-17 [9]

30. 17-24881-D-13 JESUS REYNAGA
CLH-1
JOSEPH ESCOVE VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-14-17 [28]