

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

September 8, 2015 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.

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1. 15-20910-D-13 LAPHONSA/COURTNEY GIBBS CONTINUED MOTION TO CONFIRM
JCK-3 PLAN
6-23-15 [40]
2. 15-25311-D-13 TAMAR BELVINE MOTION TO VALUE COLLATERAL OF
LRR-1 BANK OF AMERICA, N.A.
Final ruling: 7-17-15 [11]
The matter is resolved without oral argument. This is the debtor's 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. 15-24419-D-13 TYRONE LOWTHER MOTION TO CONFIRM PLAN
EWG-2 7-23-15 [21]

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. 15-24623-D-13 ESTELLE YANCEY MOTION TO CONFIRM TERMINATION
KAZ-1 OR ABSENCE OF STAY
7-28-15 [29]

DEBTOR DISMISSED: 7/30/2015

5. 15-22228-D-13 SHELDON/ANGIE SMITH OBJECTION TO CLAIM OF ALAMEDA
SJS-1 COUNTY TAX COLLECTOR, CLAIM
NUMBER 4
7-10-15 [42]

Final ruling:

This is the debtors' objection to the claim of the Alameda County Tax Collector (the "Tax Collector"), Claim No. 4 on the court's claims register. On August 25, 2015, the Tax Collector withdrew the claim. As a result of the withdrawal of the claim, the objection to the claim is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

6. 15-23828-D-13 SHERYL HUDSON MOTION TO CONFIRM PLAN
WW-2 7-27-15 [34]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because there is no proof of service on file. The motion will be denied by minute order. No appearance is necessary.

7. 14-29931-D-13 LISA ROCHA
WW-4

MOTION TO CONFIRM PLAN
7-23-15 [103]

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 U.S. Bank, by far the largest creditor in the case, at all. This happened as follows. The proof of service was filed July 24, 2015. The moving party thereafter, on the same day, filed a notice of errata stating that the motion, notice of hearing, and proof of service were all filed with an incorrect case number, Case No. 12-27014, but that everything else on the documents was correct.

That was not accurate. The service list attached to the proof of service is the service list in Case No. 12-27014, a prior case of the debtor. Because the service list from the prior case was used, the current holder of the debtor's mortgage, U.S. Bank, was not served at the address on its filed proof of claim in this case or the address on its request for special notice in this case (both filed long before this motion was filed) or at all. (The notice of errata was also served on the parties in the prior case, not the present case.)

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

8. 14-31633-D-13 CRAIG VINCENT
JCK-4

MOTION TO MODIFY PLAN
7-23-15 [82]

9. 13-22336-D-13 ROGER HAVERKAMP
WW-4

MOTION TO MODIFY PLAN
7-29-15 [60]

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.

10. 14-30347-D-13 ANTHONY DISOMMA MOTION TO MODIFY PLAN
JCK-4 7-28-15 [47]

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.

11. 10-48548-D-13 MICHAEL/PRISCILLA CONTINUED MOTION TO INCUR DEBT
JCK-4 MITCHELL 7-23-15 [49]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

12. 15-24653-D-13 CHERYL HOWE-ADKINS OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
7-29-15 [27]

Final ruling:

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

13. 14-27569-D-13 DAWN RODRIGUEZ MOTION FOR AN ORDER TO SHOW
SJS-1 CAUSE FOR VIOLATION OF THE
CONFIRMATION ORDER
7-16-15 [26]

Final ruling:

Pursuant to the amended notice of hearing, the hearing on this motion is continued to October 6, 2015 at 10:00 a.m. No appearance is necessary September 8, 2015.

14. 15-23371-D-13 HOK MA AND LOAN THAI MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
PNC BANK, N.A. VS. 8-10-15 [36]
15. 14-30872-D-13 ARMANDO COVARRUBIAS CONTINUED MOTION FOR RELIEF
HRH-1 FROM AUTOMATIC STAY
GENERAL ELECTRIC CAPITAL 1-8-15 [26]
CORP. VS.

16. 15-23574-D-13 LONEY/MARY TURPIN MOTION TO CONFIRM PLAN
TAG-1 7-13-15 [26]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties failed to serve the Franchise Tax Board at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b); and (2) the plan provides for a priority claim in favor of the Franchise Tax Board in the amount of \$700, whereas the Board has filed a proof of claim in the amount of \$1,406.24 priority. As a result, the plan does not comply with § 1322(a)(2) of the Bankruptcy Code.

For the reasons stated, the motion will be denied and the court need not address the issues raised by PennyMac Loan Services at this time. The motion will be denied by minute order. No appearance is necessary.

17. 14-29877-D-13 JOHN/KELLY COSTAMAGNA OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
8-3-15 [116]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. On September 1, 2015, the debtors 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.

18. 15-25977-D-13 BUNRIEN CHUOP
MJH-1

MOTION TO VALUE COLLATERAL OF
CITIBANK, N.A.
8-3-15 [14]

Final ruling:

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

19. 15-24982-D-13 BENNIE WILSON
HWW-1

MOTION TO VALUE COLLATERAL OF
HSBC MORTGAGE SERVICES, INC.
8-9-15 [21]

Final ruling:

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

20. 15-24982-D-13 BENNIE WILSON
HWW-2

MOTION TO VALUE COLLATERAL OF
CALIFORNIA REPUBLIC BANK
8-9-15 [25]

Final ruling:

This is the debtor's motion to value collateral of California Republic Bank (the "Bank"). The motion will be denied because the moving party 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 party served the Bank (1) to the attention and at the address of its agent for service of process; (2) to the attention of a manager, managing or general agent, or agent for service of process; and (3) to the attention of a Bankruptcy Specialist. In all three cases, service was made by first-class mail.

All three methods were insufficient because the rule requires that service on an FDIC-insured institution, such as the Bank, be to the attention of an officer and only an officer. Fed. R. Bankr. P. 7004(h). This distinction is important. For service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, the applicable rule requires service to the

attention of an officer, managing or general agent, or agent for service of process (Fed. R. Bankr. P. 7004(b)(3)), whereas service on an FDIC-insured institution must be to the attention of an officer. Fed. R. Bankr. P. 7004(h). If service on an FDIC-insured institution to the attention of its agent for service of process or to the attention of a "manager, managing or general agent, or agent for service of process" or to the attention of a "Bankruptcy Specialist" were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.

The first method was insufficient for the further reason that the rule requires service on an officer of the Bank, whereas it is unlikely an officer of the Bank is to be found at the location of the Bank's agent for service of process. Finally, all three methods were insufficient for the further reason that service on an FDIC-insured institution must be by certified mail. Rule 7004(h).

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

21. 15-24982-D-13 BENNIE WILSON OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
8-10-15 [29]

22. 10-41783-D-13 EDWIN SEDILLO MOTION FOR COMPENSATION BY THE
PLG-6 LAW OFFICE OF PRICE LAW GROUP,
APC FOR RABIN J. POURNAZARIAN,
DEBTOR'S ATTORNEY(S)
7-31-15 [102]

Tentative ruling:

This is the application of the debtor's counsel, Price Law Group, APC (the "Applicant"), for additional attorney's fees in the amount of \$1,365. The debtor signed the application indicating he agrees the requested compensation is reasonable and should be paid. The trustee has filed opposition, indicating the debtor is delinquent in his plan payments, and therefore, the plan is not feasible and will not fund an additional \$1,365 in fees. There is no indication whether the plan would fund the additional fees if the debtor were current. The court has an additional concern.

The additional services performed were the filing and prosecution of an objection to claim. The hearing was continued twice, first for a service defect and lack of sufficient evidence and then for a service defect. The time charged for reviewing the ruling the second time and for preparing, serving, and filing the notice of the second continuance, \$195, appears to be not compensable because it was necessitated by the Applicant's own service error. In addition, on two other

occasions, the Applicant billed for preparing the service and filing of certain documents, time that is secretarial in nature and not compensable. Sousa v. Miguel, 32 F.3d 1370, 1374 (9th Cir. 1994). That time was lumped in with the time spent preparing the documents themselves; thus, the court cannot determine what portion of the time was spent on the non-compensable services. The court is left to guess, and as this situation too was created by the Applicant, the court will disallow fees for 0.2 hours each time, or \$130. These deductions leave fees totaling \$1,040 which the court is prepared to approve, assuming allowance will not affect the feasibility of the plan.

The court will hear the matter.

23. 15-24183-D-13 DWIGHT/PHYLLIS WILLIAMS MOTION TO CONFIRM PLAN
MC-1 7-24-15 [22]

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 JAB Properties, listed on their Schedule G. 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 the other party to a lease with the debtors, even a month-to-month lease. Pursuant to Fed. R. Bankr. P. 1007(a)(1), the moving parties were required to include that party on their master address list, which they did not do, and pursuant to Fed. R. Bankr. P. 2002(b), were required to give that party notice of this motion.

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

24. 15-24183-D-13 DWIGHT/PHYLLIS WILLIAMS OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
8-3-15 [39]

Final ruling:

This is the trustee's objection to the debtors' claim of exemption of a personal injury claim. On August 25, 2015, the debtors 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.

25. 15-24985-D-13 DENNIS/BRENDA RAFF OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
8-10-15 [16]

26. 13-30490-D-13 CURTIS/ROSELAND ADAMS MOTION TO MODIFY PLAN
JDP-2 7-22-15 [32]

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. 15-21692-D-13 MARIA GONZALEZ MOTION TO CONFIRM PLAN
TOG-7 7-20-15 [48]

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. 15-24499-D-13 SHANNON ROCK CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
7-17-15 [23]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

29. 10-35206-D-13 SHEILA PIONA MOTION TO VALUE COLLATERAL OF
JDP-1 KEYBANK, N.A.
8-25-15 [83]

30. 15-23828-D-13 SHERYL HUDSON OBJECTION TO CONFIRMATION OF
BHT-1 PLAN BY FIRST NATIONWIDE
MORTGAGE CORPORATION
8-25-15 [58]

31. 15-24449-D-13 GUADALUPE/JAIME MOTION TO VALUE COLLATERAL OF
RS-2 HERNANDEZ CALHFA MORTGAGE ASSISTANCE
CORPORATION
8-17-15 [43]

Final ruling:

This is the debtors' motion to value collateral of OneWest Bank and CalHFA Mortgage Assistance Corp. The motion will be denied because the evidence of service is insufficient. The proof of service states that service was made on July 15, 2015 and that the proof of service was signed on July 15, 2015, whereas the notice and motion were not signed until August 17, 2015 and the declaration was not signed until August 13, 2015. Thus, the proof of service is inaccurate.

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

32. 15-21854-D-13 CEFERINO/XIOMARA GONZALES CONTINUED MOTION TO SUBSTITUTE
MSM-2 COLLATERAL
7-28-15 [30]

33. 10-37657-D-13 GARY/LENDA FAGUNDES MOTION TO VALUE COLLATERAL OF
JDP-1 PNC BANK, N.A.
8-19-15 [72]

34. 10-34662-D-13 JUAN PONCE AND VICKIE MOYA-PONCE MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS, INC.
JDP-1 8-25-15 [62]
35. 15-26579-D-13 JAMEESE GUESS MOTION TO EXTEND AUTOMATIC STAY
SG-2 O.S.T.
8-26-15 [19]
36. 15-26602-D-13 RICHARD EVANS AND BONNIE LEBERMAN MOTION TO EXTEND AUTOMATIC STAY
EJS-1 O.S.T.
8-27-15 [9]