

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 18, 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.	16-25607-D-13	JOHN PERATA	MOTION TO VALUE COLLATERAL OF
	SJS-1		WELLS FARGO BANK, N.A.
			9-13-16 [9]

Final ruling:

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

October 18, 2016 at 10:00 a.m.

2. 16-22212-D-13 KATINA UMPIERRE
PGM-2

MOTION TO CONFIRM PLAN
9-6-16 [71]

3. 11-39616-D-13 MONTY/PENNIE RAMIREZ
CJY-1

MOTION TO VALUE COLLATERAL OF
GREEN TREE
9-15-16 [58]

Final ruling:

This is the debtors' motion to value collateral of Green Tree. The motion will be denied because the moving parties failed to serve Green Tree in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Green Tree (1) at a post-office box address with no attention line; and (2) at a street address to the attention of "Recovery Dept T-120." Both methods were insufficient because 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.

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

4. 11-39533-D-13 EDMOND/CONSTANCE CHICOINE
CJY-1

MOTION TO VALUE COLLATERAL OF
FIRST TENNESSEE BANK
9-14-16 [58]

Final ruling:

This is the debtors' motion to value collateral of First Tennessee Bank (the "Bank"). The motion will be denied because 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 (1) at a street address with no attention line; (2) at a street address to the attention of an officer; and (3) through its agent for service of process. All three methods were insufficient because service on an FDIC-insured institution, such as the Bank, must be by certified mail whereas here, there is no evidence of service by certified mail. The first and third methods were insufficient for the additional reason that service on an FDIC-insured corporation must be to the attention of an officer.

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

Tentative ruling:

This is the debtor's motion to value collateral of the United States Small Business Administration ("SBA"); namely, a second position deed of trust against the debtor's residence. (The motion was filed as a motion to value collateral of ReadyCap Lending, LLC. The claim and lien are actually held by the SBA.) The motion was brought pursuant to LBR 9014-1(f)(2) and the hearing was continued to permit the filing of an opposition and reply. The SBA has filed opposition; as of this date, the debtor has not filed a reply. For the following reasons, the motion will be denied.

In support of her motion, the debtor submitted her own declaration, in which she testifies she has owned the home that is the subject of the motion for many years and is familiar with its value and problems. She states the home is almost 100 years old and has substantial deferred maintenance. The debtor believes the value of the home is \$195,000. There is approximately \$204,000 due on the first mortgage against the property. Thus, if the debtor's value is correct, there is no equity in the property to secure the SBA's claim. The SBA has filed a declaration of real estate appraiser Kathleen Christianson, along with a copy of her appraisal. Ms. Christianson testifies she has personally inspected the interior and exterior of the property; in addition, her appraisal includes an analysis of five comparable properties. Ms. Christianson values the property at \$400,000. If this value is accurate, there is equity in the property to support the SBA's lien.

Ms. Christianson's appraisal report states she has over 10 years of experience in appraising properties of the same type as the debtor's property in the same market area. The appraisal report discloses that the property owner, presumably the debtor, informed her of problems with the property. The owner said the pool equipment and pipes have black mold that a pool contractor has estimated would cost \$8,000 to \$15,000 to repair; the roof is sagging and a roof contractor has said it would cost \$20,000 to \$35,000 to repair it; and the carport needs to be replaced at a cost of \$20,000 to \$25,000. Ms. Christianson states in the report that if all these items are needed, the value of the property may be impacted; she adds that the owner's cost estimates range between \$48,000 and \$75,000. Ms. Christianson took the age of the home into account in her valuation, noting the debtor's home is 92 years old whereas two of the comparables are 97 years old and the other three are 48, 64, and 54 years, respectively. She made adjustments for the age of the latter three.

On the other hand, the appraisal report includes a detailed listing of the interior features of the debtor's home, which include upgrades throughout - upgraded flooring, doors, lighting fixtures, dual-pane windows, and custom window and wall treatments; a remodeled kitchen with granite counter tops, upgraded appliances, stainless steel sinks, upgraded wood cabinets, a custom built-in bar, and a mini-bar refrigerator and wine chiller; and remodeled master and guest bathrooms with upgraded stone counter tops, upgraded tiled flooring, water saver toilets, a large walk-in tiled shower in the master bath, and a jetted tub with tiled surround in the master bath. Ms. Christianson made adjustments to each of the comparables based on its condition as compared to the condition of the debtor's property, adding that the appraised value of the debtor's property is above predominant values due to its size, pool, and "overall good remodeled condition."

Given Ms. Christianson's experience as a real estate appraiser, the court gives her valuation considerably more weight than the debtor's, who appears to have no qualifications to appraise real property. Accordingly, the court finds the value of the property to be \$400,000 less repair costs of \$62,000 (the middle of the range estimated by the debtor), or \$338,000. At that value, there is \$134,000 in equity over and above the amount due on the first lien. If repair costs are at the high end of the range, \$75,000, the value of the property would be \$325,000, over \$100,000 more than the amount due on the first.

For the reasons stated, the court concludes there is significant equity in the property to secure the SBA's claim, and the motion will be denied. The court will hear the matter.

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| 6. | 16-23647-D-13 | GINA CRONIN | CONTINUED OBJECTION TO |
| | RDG-2 | | CONFIRMATION OF PLAN BY RUSSELL |
| | | | D. GREER |
| | | | 8-1-16 [37] |
| | | | |
| 7. | 15-29450-D-13 | HOWARD HILL | MOTION TO MODIFY PLAN |
| | PLG-1 | | 8-24-16 [18] |
| | | | |
| 8. | 11-37056-D-13 | LENDY/REGINA GOMEZ | MOTION TO VALUE COLLATERAL OF |
| | CJY-1 | | CIT BANK, N.A. |
| | | | 9-22-16 [93] |

9. 13-29266-D-13 GERARDO MANZO AND BEATRIZ CONTINUED MOTION TO DISMISS
RDG-2 CEJA CASE
9-6-16 [60]

10. 13-31575-D-13 RICARDO/REBECCA DE JESUS MOTION TO MODIFY PLAN
MSM-1 9-12-16 [24]

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.

11. 11-34278-D-13 KRISTOPHER KOVACS MOTION TO VALUE COLLATERAL OF
CJY-1 CITIMORTGAGE/CITIBANK, N.A.
9-12-16 [48]

Final ruling:

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

Tentative ruling:

This is the debtor's motion to value collateral of Trojan Capital Investment LLC ("Trojan"); namely, a second position deed of trust against the debtor's residence. Trojan has filed opposition and the debtor has filed a reply. For the following reasons, the court intends either to grant the motion or to continue the hearing to permit Trojan to obtain an appraisal.

In support of the motion, the debtor submitted her own declaration, in which she testified she believes the fair market value of the property did not exceed \$395,000 as of the date of filing (August 24, 2016). She stated the balance owed on the senior deed of trust, in favor of Nationstar Mortgage, is approximately \$431,000. In its opposition, Trojan (1) contests the debtor's valuation of the property and requests time to obtain an appraisal; and (2) questions the balance owed on the senior lien. Trojan believes that, as the debtor has the burden of proof on the motion, she should be required to provide a payoff as of the petition date unless the senior lienholder files a proof of claim. (It has not.) Trojan adds it believes the underlying loan was modified and the balance owed may be less than alleged by the debtor. Finally, Trojan requests that any order granting the motion include several protections for Trojan, including that the lien avoidance is contingent on the debtor's completion of the plan and receipt of a discharge, and so on.

In reply to the opposition, the debtor has filed a supplemental declaration in which she addresses both the value of the property and the amount due on the senior lien. Based on a preliminary title report and copies of the first pages of the two deeds of trust, attached to the debtor's declaration as exhibits, it is clear Nationstar's lien is in first position. The debtor has also submitted a copy of a mortgage payoff statement from Nationstar dated July 27, 2016 listing the total amount due to pay the loan in full as \$431,869.92. The court is satisfied from this evidence that the balance due on the loan is as stated.

As regards the value of the property, the debtor states in her supplemental declaration that a substantially similar house recently closed for the amount at which she values her house; that her house backs up onto railroad tracks, which adversely affects its value; and that the house was briefly listed at \$375,000 and the only offer was as a short sale, for \$330,000. Based on this evidence, it appears there is no value in the property to secure Trojan's second position deed of trust. However, it is the court's practice to permit junior lienholders time to obtain an appraisal even on motions brought pursuant to LBR 9014-1(f)(1). This is because the debtor has control of the decision when to file the motion, and thus, has time to obtain his or her evidence, including a property valuation, ahead of time, whereas under LBR 9014-1(f)(1), a respondent may have as little as 14 days' notice of the time to file opposition. Thus, if Trojan requests, the court will continue the hearing. Otherwise, the motion will be granted and Trojan's secured claim will be valued at \$0.00. No further relief will be afforded. (It is not the court's practice to include in orders granting motions to value collateral the various extra provisions requested by Trojan as they are unnecessary.)

The court will hear the matter.

13. 11-34389-D-13 HENRY/MYRNA CAJILOG
CJY-1

MOTION TO VALUE COLLATERAL OF
PATELCO CREDIT UNION
9-14-16 [73]

Final ruling:

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

14. 11-31094-D-13 VAN/KIMBERLY BLADES
CJY-3

MOTION TO VALUE COLLATERAL OF
MTGLQ INVESTORS/SHELLPOINT
MORTGAGE
9-12-16 [141]

Final ruling:

This is the debtors' motion to value collateral of MTGLQ Investors/Shellpoint Mortgage ("MTGLQ/Shellpoint"). The motion will be denied because the moving parties failed to serve MTGLQ/Shellpoint in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served MTGLQ/Shellpoint at the post office box address on the transfer of claim filed December 11, 2015 by which Shellpoint Mortgage Servicing gave notice that it is the transferee of the claim. However, service was made with no attention line, whereas the rule requires service to the attention of an officer, managing or general agent, or agent for service of process.

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

15. 16-22099-D-13 RUBEN VALLEJO
PLC-3

OBJECTION TO CLAIM OF SAN
JOAQUIN COUNTY TAX COLLECTOR,
CLAIM NUMBER 58-23-16 [46]

Final ruling:

This is the debtor's objection to the claim of the San Joaquin County Tax Collector, Claim No. 5 on the court's claims register. The objection will be overruled for the following reasons: (1) the moving party failed to serve the Tax Collector at the address on his proof of claim, as required by LBR 3007-1(c); (2) the proof of service states that service was made and the proof of service was signed on August 24, 2016, whereas the proof of service was filed August 23, 2016; thus, the proof of service cannot be true; (3) the Tax Collector was served by certified mail whereas the Tax Collector is not an FDIC-insured institution, and thus, was required to be served by first-class mail (compare Fed. R. Bankr. P. 7004(b)(6) and preamble to Rule 7004(b) with Rule 7004(h)); and (4) the proof of service is signed under oath only as to the declarant's age and citizenship and not as to the facts of service, as required by 28 U.S.C. § 1746.

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

October 18, 2016 at 10:00 a.m.

16.	16-25918-D-13 MKM-2	MICHAEL SHELBY	CONTINUED MOTION TO EXTEND AUTOMATIC STAY 9-12-16 [13]
17.	16-25228-D-13 RDG-1	PATRICK WOLRIDGE	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-26-16 [13]
18.	16-25228-D-13 ETL-1	PATRICK WOLRIDGE	OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A. 9-28-16 [16]
19.	16-26535-D-13 MS-1	LUIS CAVAZOS	MOTION TO EXTEND AUTOMATIC STAY 9-30-16 [8]

20.	16-24940-D-13 RDG-2	FELIX AJAYI	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-26-16 [20]
21.	16-25149-D-13 RDG-1	THEODORE MADZEY	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-26-16 [42]
22.	11-37056-D-13 CJY-2	LENDY/REGINA GOMEZ	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA 9-27-16 [97]
23.	11-37056-D-13 CJY-3	LENDY/REGINA GOMEZ	MOTION TO VALUE COLLATERAL OF CITIBANK 9-27-16 [101]

24.	16-25058-D-13 RDG-1	CHARLENE POOLE	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-26-16 [18]
25.	16-24963-D-13 RDG-1	ROXANA NAJERA	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-26-16 [19]
26.	16-24968-D-13 RDW-1	SHERON NOR WOO	OBJECTION TO CONFIRMATION OF PLAN BY CAM IX TRUST 9-28-16 [25]
27.	16-25068-D-13 RDG-1	SHANE FRITTS	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-26-16 [13]

28. 16-25068-D-13 SHANE FRITTS
HRH-1

OBJECTION TO CONFIRMATION OF
PLAN BY CASHMERE VALLEY BANK
9-28-16 [16]

29. 16-23973-D-13 WAYNE FLORES
VFI-1
VALLEY FAMILY INVESTORS, LLC
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-4-16 [53]

Final ruling:

The motion is denied for the following reasons: (1) moving party failed to file a separate Relief from Stay Summary Sheet (Form EDC 3-468) as required by LBR 9014-1; (2) the docket control number, VFI-1, was previously used by moving party on a motion was denied on October 4, 2016, the present motion required a new docket control number (i.e. VFI-2); (3) moving party's notice of hearing did not provide the appropriate opportunity for opposition when giving less than 28 days' notice as required by LBR 9014-1(f)(2)(c); (4) the notice of hearing indicates the correct hearing time in the caption, but then indicates an incorrect hearing time (9:30 a.m.) in the text of the document; (5) the proof of service filed in support of the motion does not contain the full case caption as required by LBR 9014-1(e)(3); (6) the proof of service is not signed under oath; and (7) moving party failed to serve the debtor. As a result of these procedural and service defects, the court will deny the motion by minute order. No appearance is necessary.