

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

October 22, 2013 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.	10-94505-D-13	DENNIS WILLIAMS	MOTION TO VALUE COLLATERAL OF
	JDP-1		JP MORGAN CHASE BANK, N.A.
			9-9-13 [44]

Final ruling:

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

2. 13-24718-D-13 STEPHANIE JOHNSON MOTION TO CONFIRM PLAN
BSH-6 9-7-13 [64]
CALENDARED IN ERROR, TO BE
RESCHEDULED BY M.P.

Final ruling:

The hearing on this motion has been continued by the moving party to October 29, 2013, at 10:00 a.m.

3. 10-92223-D-13 BRYAN/NALY PHENG MOTION TO MODIFY PLAN
CJY-4 9-11-13 [51]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

4. 11-94024-D-13 LOUIS/ROXANNE CATTI MOTION TO MODIFY PLAN
CJY-1 9-17-13 [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.

5. 13-91024-D-13 BRUCE VELTHOEN MOTION TO CONFIRM PLAN
BSH-5 8-28-13 [59]

Final ruling:

The motion will be denied because the moving party failed to serve the creditor that filed Claim No. 4 at the address on its proof of claim, as required by Fed. R. Bankr. P. 2002(g). (The moving party used a PACER matrix as his service list; however, the list was apparently printed earlier than the date of service, because it did not include the address for Claim No. 4, which had been filed a week before the date of service.) The motion will be denied for the additional independent reason that the plan values the secured claim of Green Tree Servicing at \$85,000, whereas the holder of the claim does not accept the plan, and the court has determined that the value of the property securing the claim is \$140,000. Thus, the plan does not comply with § 1325(a)(5) of the Code.

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

6. 13-91024-D-13 BRUCE VELTHOEN
BSH-6

MOTION TO VALUE COLLATERAL OF
CITIMORTGAGE, INC.
8-28-13 [64]

Final ruling:

This is the debtor's motion to value collateral of CitiMortgage, Inc. - a second position deed of trust against the real property at 2009 Terrance Way, Modesto, California. The motion will be denied because the moving papers are insufficient to provide notice to CitiMortgage that its claim is the target of the motion, and insufficient to provide notice of the nature of the relief requested.

The first line of the motion is: "To Officer, General Manager, Agent for Service of Process for CitiMortgage." With that exception, the motion does not mention CitiMortgage at all. The notice of hearing does not mention CitiMortgage at all, and does not indicate that the claim sought to be valued is CitiMortgage's second position deed of trust. The first sentence of the motion is: "Bruce Velthoen, debtor(s) in the above-referenced matter, move(s) the Court, pursuant to 11 U.S.C. § 506(a), for an order valuing real property securing only a first deed of trust[,] leaving a second deed of trust completely unsecured." The motion then states, "Debtor owes \$155,945 on the first deed of trust. As of the date of filing of the petition, Debtor(s) estimate(s) the value of the real property to be \$85,000. Estimated deficiency balance is to be allowed as a general unsecured claim." This language suggests that the "deficiency balance" that is to be allowed as a general unsecured claim is \$70,945 (\$155,945 - \$85,000), which is the amount by which the first deed of trust is undersecured, whereas the court believes the debtor's actual intention is to value CitiMortgage's second position deed of trust at \$0.

The court examined this same language in its ruling on an earlier motion to value CitiMortgage's claim, and stated that "any subsequent motion directed to CitiMortgage should clarify that the debtor is seeking to value the property at an amount that will leave CitiMortgage's claim completely unsecured." The new motion and notice of hearing do not do that. The moving papers are not sufficient to inform CitiMortgage that its claim is the target of the motion, that the debtor is seeking to value the collateral securing its second position deed of trust, or that the debtor seeks to value the collateral securing CitiMortgage's deed of trust at \$0, leaving its entire claim as a general unsecured claim.

For this reason, the motion will be denied by minute order. No appearance is necessary.

7. 11-92527-D-13 KENNETH/SARA WHITTLE
CJY-3

MOTION TO SELL
9-24-13 [45]

8. 11-92527-D-13 KENNETH/SARA WHITTLE MOTION TO AVOID LIEN OF VALLEY
CJY-4 FIRST CREDIT UNION
9-24-13 [50]

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

9. 12-93234-D-13 TOMMY/TENICIA WILLIAMS MOTION TO MODIFY PLAN
JCK-1 9-13-13 [23]

10. 13-90735-D-13 GAIL SPANGGORD MOTION FOR RELIEF FROM
MRG-1 AUTOMATIC STAY
HARLEY-DAVIDSON CREDIT CORP. 9-12-13 [23]
VS.

Final ruling:

In the debtor's confirmed plan this creditor is scheduled as Class 4 - to be paid outside the plan. Therefore, the motion is unnecessary as the plan explicitly provides: "Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of its loan or security documentation provided this case is pending under chapter 13." The court will deny the motion as unnecessary by minute order. No appearance is necessary.

11. 13-91338-D-13 TEJINDER GREWAL MOTION FOR RELIEF FROM
AAS-1 AUTOMATIC STAY AND/OR MOTION
STEARNS BANK, NA VS. FOR ADEQUATE PROTECTION
9-24-13 [69]

Final ruling:

This case was dismissed on September 26, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

12. 11-94239-D-13 SHELLY MCKAY
JCK-2

MOTION TO MODIFY PLAN
9-13-13 [26]

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.

13. 13-91541-D-13 BALADAN BEBLA
JDP-1

MOTION TO VALUE COLLATERAL OF
ARX FINANCIAL, INC.
9-10-13 [10]

Final ruling:

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

14. 13-91541-D-13 BALADAN BEBLA
JDP-2

MOTION TO AVOID LIEN OF ASSET
ACCEPTANCE, LLC
9-10-13 [14]

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. 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.

15. 13-90342-D-13 GREGORY SCOTT
DCJ-3

CONTINUED MOTION TO CONFIRM
PLAN
7-15-13 [58]

16. 13-91446-D-13 CHERYL GUILLES MOTION TO VALUE COLLATERAL OF
BSH-3 GREEN TREE LENDING, LLC
9-18-13 [28]

Final ruling:

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

17. 13-91446-D-13 CHERYL GUILLES MOTION TO VALUE COLLATERAL OF
BSH-4 CAPITAL ONE BANK
9-18-13 [32]

Final ruling:

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

18. 13-90647-D-13 ELIZABETH LOPEZ MOTION FOR ENTRY OF DEFAULT
13-9026 DTD-1 JUDGMENT
FIRST NATIONAL BANK OF OMAHA 9-10-13 [10]
V. LOPEZ

19. 13-90648-D-13 ABELARDO/DIOSITA MENDOZA MOTION FOR RELIEF FROM
NATIONSTAR MORTGAGE, LLC VS. AUTOMATIC STAY
9-25-13 [44]

Final ruling:

The motion will be denied for the following reasons: (1) the notice of hearing fails to contain all the necessary language regarding filing of oppositions to the motion as required by LBR 9014-1(d)(3); (2) the proof of service filed is not signed under the penalty of perjury as required by FRBP 7005-1; (3) moving party failed to serve the debtors' attorney; and (4) moving party failed to serve the notice of hearing. As a result of these procedural defects the motion will be denied by minute order. No appearance is necessary.

20. 09-91253-D-13 STEVEN/JANET WARD
CJY-3

MOTION TO MODIFY PLAN
9-12-13 [54]

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.

21. 13-90863-D-13 LEONCIO ALVARADO
TOG-3

MOTION TO VALUE COLLATERAL OF
CITIMORTGAGE, INC.
9-13-13 [50]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Citimortgage, Inc. at \$67,000, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a deed of trust on real property that is not the debtor's residence. No timely opposition has been filed and the valuation requested in the motion is supported by the record. As such the court will grant the motion and set the amount of Citimortgage, Inc.'s secured claim at \$67,000 for the purpose of plan confirmation. The moving party is to submit an order which sets the creditor's secured claim at \$67,000. No further relief will be afforded. No appearance is necessary.

22. 12-92265-D-13 LACK VA
CJY-1

OBJECTION TO CLAIM OF JP MORGAN
CHASE BANK, N.A., CLAIM NUMBER
4
8-29-13 [25]

Final ruling:

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

23. 10-94767-D-13 DAVID/KATHRYN BEILSTEIN
DVD-4

MOTION TO MODIFY PLAN
8-22-13 [61]

Final ruling:

The motion will be denied for the following reasons: (1) the moving parties served the motion, notice of hearing, and supporting declaration, but not the plan itself, as required by LBR 3015-1(d)(2); and (2) the moving parties failed to serve the creditor filing Claim No. 9 at the address at which the creditor requested notice in its Transfer of Claim for Security, DN 32, as required by Fed. R. Bankr. P. 2002(g)(1).

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

24. 13-91067-D-13 LAWRENCE GEIGER
PGM-2

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT
9-12-13 [43]

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 to extend deadline to file a complaint objecting to dischargeability of a debt is supported by the record. As such the court will grant the motion to extend deadline to file a complaint objecting to dischargeability of a debt. Moving party is to submit an appropriate order. No appearance is necessary.

25. 13-91475-D-13 JAIME MUNGUIA
CWC-1

MOTION OBJECTING TO USE OF CASH
COLLATERAL
9-16-13 [29]

This motion will be heard at 10:30 a.m.

26. 13-91475-D-13 JAIME MUNGUIA
CWC-2

OBJECTION TO CONFIRMATION OF
PLAN BY MELVIN MYERS AND
VICTORIA MYERS
9-24-13 [40]

This objection will be heard at 10:30 a.m.

27. 13-91475-D-13 JAIME MUNGUIA
SSA-1

MOTION OBJECTION TO USE OF CASH
COLLATERAL BY SECURED CREDITOR
9-10-13 [26]

This motion will be heard at 10:30 a.m.

28. 13-91475-D-13 JAIME MUNGUIA MOTION TO CONFIRM TERMINATION
SSA-2 OR ABSENCE OF STAY
9-18-13 [33]

This motion will be heard at 10:30 a.m.

29. 12-91978-D-13 JASON/NANCY PHILLIPS MOTION TO MODIFY PLAN
CJY-3 9-5-13 [37]

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.

30. 13-91378-D-13 DIEGO CASTILLO OBJECTION TO CONFIRMATION OF
MDE-1 PLAN BY ONEWEST BANK, FSB
8-28-13 [15]

31. 13-91378-D-13 DIEGO CASTILLO OBJECTION TO CONFIRMATION OF
RDG-3 PLAN BY RUSSELL D. GREER
9-20-13 [22]

32. 13-91184-D-13 GAIL ADAMS-BAILEY MOTION TO VALUE COLLATERAL OF
JAD-2 GREEN TREE SERVICING, LLC
8-28-13 [24]

Final ruling:

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

33. 11-90287-D-13 ROBERT/JOYCE PALMAYMESA MOTION TO MODIFY PLAN
BPC-3 9-9-13 [75]

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.

34. 13-91387-D-13 ANTHONY COOPER OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
9-20-13 [16]

Final ruling:

Objection withdrawn by moving party on October 11, 2013. Matter removed from calendar.

35. 10-91689-D-13 JULIE COX MOTION TO VALUE COLLATERAL OF
JDP-1 JP MORGAN CHASE BANK, N.A.
9-3-13 [36]

Final ruling:

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

36. 10-93993-D-13 CARLOS/MARIA CAUDILLO MOTION TO VALUE COLLATERAL OF
JDP-1 BANK OF AMERICA, N.A.
9-11-13 [56]

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 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 Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

37. 11-94295-D-13 STEVEN/BETH SALIE MOTION TO FILE CLAIM AFTER
CJY-3 CLAIMS BAR DATE
9-17-13 [46]

38. 12-92196-D-13 DALE STEELEY MOTION TO MODIFY PLAN
JAD-1 9-11-13 [25]

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.

39. 12-92598-D-13 ERROL JERNIGAN AND ALICIA MOTION TO MODIFY PLAN
JDP-2 THOMAS 9-18-13 [38]

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.

40. 10-94452-D-13 HARRY/BRIANNA JOHNSON MOTION TO INCUR DEBT AND/OR
PBG-2 MOTION TO MODIFY PLAN
9-30-13 [56]
41. 10-92363-D-13 MARBITO/MYRNA MANDE MOTION TO APPROVE LOAN
CJY-1 MODIFICATION
9-30-13 [62]
42. 12-90465-D-13 ALFREDO/MARTA ACOSTA MOTION TO INCUR DEBT
CJY-3 10-7-13 [57]
43. 08-91472-D-13 LUKE MCDOUGLE MOTION TO VALUE COLLATERAL OF
DCJ-3 CITIZENS EQUITY FIRST CREDIT
UNION
10-2-13 [110]

Final ruling:

This is the debtor's motion to value collateral of Citizens Equity First Credit Union ("Citizens"). The motion will be denied because the moving party failed to serve Citizens in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party serve Citizens by certified mail to the attention of its president. However, Citizens is not an FDIC-insured institution, and thus, was required to be served by first-class mail. See preamble to Fed. R. Bankr. P. 7004(b).

The motion states that service was made by certified mail because Citizens is a federally insured institution. However, the rule specifically defines an "insured depository institution" as that term is defined in section 3 of the Federal Deposit Insurance Act. Fed. R. Bankr. P. 7004(h). Section 3 of the Federal Deposit Insurance Act, in turn, defines an "insured depository institution" as "any bank or savings association the deposits of which are insured by the [Federal Deposit Insurance] Corporation pursuant to this Act." 12 U.S.C. § 1813(c)(2). Credit unions are insured by the National Credit Union Share Insurance Fund, not the Federal Deposit Insurance Corporation.

The hearing will be continued to November 5, 2013, at 10:00 a.m., the moving party to file a notice of continued hearing no later than October 22, 2013, and to serve it, together with the motion and supporting documents, on Citizens, pursuant to Fed. R. Bankr. P. 7004(b)(3), no later than October 22, 2013. The moving party shall file a proof of service no later than October 25, 2013.

The hearing will be continued by minute order. No appearance is necessary.

44. 13-91475-D-13 JAIME MUNGUIA OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-2-13 [70]

This objection will be heard at 10:30 a.m.

45. 13-91475-D-13 JAIME MUNGUIA OBJECTION TO CONFIRMATION OF
SSA-3 PLAN BY ROGELIO LUNA
10-1-13 [60]

This motion will be heard at 10:30 a.m.

46. 08-91389-D-13 SHIRLEY LITTLE MOTION TO APPROVE LOAN
CJY-3 MODIFICATION
10-3-13 [63]

47. 10-94492-D-13 JUAN MACIAS AND PATRICIA MOTION TO APPROVE LOAN
TOG-3 GALLEGOS MODIFICATION
10-4-13 [45]
48. 13-91823-D-13 SABRINA AFIFI MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
10-10-13 [8]