

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

October 27, 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.

1.	15-90402-D-13 TOG-3	FILEMON BANUELOS AND ESPERANZA BANLELOS	MOTION TO CONFIRM PLAN 9-11-15 [54]
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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 the three creditors that were added to their Schedule F by amendment filed September 24, 2015. Thus, the moving parties failed to comply with Fed. R. Bankr. P. 2002(b) requiring service on all creditors.

As a result of this service defect, the motion will be denied and the court need not reach the issue raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

2. 15-90206-D-13 KATRINA CHANDLER CONTINUED MOTION TO CONFIRM
SJS-2 PLAN
7-17-15 [49]
3. 15-90107-D-13 CONSTANCE MCCOY MOTION TO MODIFY PLAN
JCK-3 9-18-15 [51]
4. 15-90226-D-13 JOHNNY/TAMARA MATTHEWS MOTION TO CONFIRM PLAN
DCJ-4 9-15-15 [71]
5. 12-92729-D-13 DAVID/BARBARA ROSE MOTION TO MODIFY PLAN
MSN-1 9-18-15 [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.

6. 15-90541-D-13 KUBANGUSU MAHUNGU
RS-3

MOTION TO VALUE COLLATERAL OF
DEUTSCHE BANK NATIONAL TRUST
COMPANY
9-25-15 [59]

Final ruling:

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

7. 13-91847-D-13 JOEL/LAURA PHELAN
DWC-3

MOTION TO MODIFY PLAN
9-25-15 [45]

8. 15-90650-D-13 RAYMOND/CLEETA AFANADOR
MSN-1

MOTION TO AVOID LIEN OF SPRING
CREEK GOLF & COUNTRY CLUB
9-4-15 [19]

Final ruling:

This is the debtors' motion to value collateral of Spring Creek Golf & Country Club ("Spring Creek"). The motion will be denied because the moving parties failed to serve Spring Creek in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Spring Creek by certified mail to the attention of an Officer, Managing or General Agent, whereas service on a corporation, partnership, or other unincorporated association such as Spring Creek that is not an FDIC-insured institution must be by first-class mail, not certified mail.

This distinction is important. Whereas service on an FDIC-insured institution must be by certified mail (Fed. R. Bankr. P. 7004(h)), service on an entity that is not an FDIC-insured institution must be by first-class mail (preamble to Fed. R. Bankr. P. 7004(b)). If service by certified mail on an entity that is not an FDIC-insured institution were appropriate, the distinction between the two rules would be superfluous.

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

9. 11-93351-D-13 HUMBERTO/YOLANDA MARTINEZ MOTION TO MODIFY PLAN
JCK-6 9-11-15 [84]

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. 10-92562-D-13 JESUS/ELVA VARELA MOTION TO VALUE COLLATERAL OF
JDP-1 BANK OF AMERICA, N.A.
9-30-15 [77]

Final ruling:

This is the debtors' motion to value collateral of Bank of America (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) by certified mail to the attention of an officer, managing or general agent, or agent for service of process; (2) by first-class mail at a street address, with no attention line; and (3) by first-class mail to the attention and at the address of its corporate agent for service of process.

The first method was 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 an officer, managing or general agent, or agent for service of process were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.

The second method was insufficient because service must be to the attention of an officer, whereas here, there was no attention line. The third method was insufficient because 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, the second and third 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.

11. 10-92668-D-13 MICHAEL/JOSEFINA GORMAN MOTION TO VALUE COLLATERAL OF
PGM-4 HSBC MORTGAGE CORPORATION (USA)
9-25-15 [118]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of HSBC Mortgage Corporation (USA) 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 HSBC Mortgage Corporation (USA)'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

12. 15-90370-D-13 GEORGE/REBECCA SOMERS MOTION TO CONFIRM PLAN
PBG-3 8-17-15 [51]

13. 11-92376-D-13 JAMES WOLF MOTION TO MODIFY PLAN
PBG-2 8-18-15 [118]

14. 15-90379-D-13 GWENDOLYN BYRD MOTION TO CONFIRM PLAN
RAW-2 8-27-15 [43]

15. 15-90781-D-13 OLIVIA SIMS OBJECTION TO CONFIRMATION OF
RDG-3 PLAN BY RUSSELL D. GREER
10-2-15 [26]
16. 10-93182-D-13 NICK/PATRICIA FLORES MOTION TO SUBSTITUTE PATRICIA
TPH-4 FLORES AS THE REPRESENTATIVE
FOR NICK FLORES, MOTION FOR
EXEMPTION FROM FINANCIAL
MANAGEMENT COURSE, AND/OR
MOTION FOR EXEMPTION FROM 11
U.S.C SECTION 1328 CERTIFICATE,
ETC.
9-22-15 [86]
17. 11-93492-D-13 KEVIN/BOBBIE YOUNG MOTION TO MODIFY PLAN
MLP-11 9-4-15 [196]
18. 11-93495-D-13 ABEL/JUNE GOMEZ MOTION TO EXCUSE DEBTOR, ABEL
CJY-10 M. GOMEZ, FROM COMPLETING THE
11 U.S.C. SECTION 1328
CERTIFICATE OR CERTIFICATE OF
CHAPTER 13 DEBTOR RE: 11 U.S.C.
SECTION 522(Q) EXEMPTIONS
10-2-15 [115]

19. 11-93495-D-13 ABEL/JUNE GOMEZ MOTION TO SUBSTITUTE JUNE I.
CJY-11 GOMEZ AS THE REPRESENTATIVE FOR
ABEL M. GOMEZ
10-2-15 [120]

20. 15-90499-D-13 KENNETH/TRACIE THORNE MOTION TO CONFIRM PLAN
DEF-4 9-1-15 [76]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons. First, the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The moving parties failed to serve the creditor that filed Claim No. 1 at the address on its proof of claim, as required by Fed. R. Bankr. P. 2002(g), and failed to serve the creditors filing Claim Nos. 2 through 6 at all. In addition, the moving parties failed to serve the creditors requesting special notice at DNs 39 and 83 at their designated addresses (or at all). They also failed to serve the creditors added to their Schedule F by amendment filed October 21, 2015. Second, according to the proof of service, the notice of hearing was not served. Third, the title of the notice of hearing is Notice of Hearing on the Motion to Value Collateral of First Tennessee Bank, N.A.

As a result of these service and notice defects, the motion will be denied and the court need not address the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary

21. 15-90499-D-13 KENNETH/TRACIE THORNE CONTINUED MOTION FOR RELIEF
RDW-1 FROM AUTOMATIC STAY AND/OR
CHEVRON FEDERAL CREDIT UNION MOTION FOR ADEQUATE PROTECTION
VS. 8-10-15 [65]

22. 15-90946-D-13 DAVID/CAROL TRUAX MOTION TO EXTEND AUTOMATIC STAY
CJY-1 10-7-15 [8]
23. 10-92776-D-13 ABELINO/BERTHA RUIZ MOTION TO VALUE COLLATERAL OF
JDP-1 OPERATING ENGINEERS LOCAL #3
FEDERAL CREDIT UNION
10-7-15 [49]
24. 10-92686-D-13 JESUS/ARCELIA OLIVERA MOTION TO VALUE COLLATERAL OF
JDP-1 NATIONSTAR MORTGAGE LLC
10-2-15 [54]
25. 15-90897-D-13 STACY LEACH MOTION TO VALUE COLLATERAL OF
MLA-1 OCWEN LOAN SERVICING, LLC
10-6-15 [11]