

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 4, 2014 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. [10-46601](#)-D-13 THOMAS/CRYSTINE PETERSON MOTION TO MODIFY PLAN
DN-1 9-25-14 [[35](#)]

2. [14-26303](#)-D-13 MARGUERITE ARREAGA MOTION TO CONFIRM PLAN
SJS-1 9-15-14 [[23](#)]

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.

3. [14-24904](#)-D-13 ABEL TAPIA AND ROSA ROSAS MOTION TO CONFIRM PLAN
SJ-2 9-10-14 [[62](#)]

Final ruling:

The relief requested in the motion is supported by the record, and although the trustee filed opposition on October 3, 2014, he filed a statement of non-opposition on October 24, 2014. No other 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. [14-28408](#)-D-13 JOAQUIN/MARTHA RAMON OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-3-14 [[19](#)]

5. [14-28709](#)-D-13 JAMES/ERICKA BARNEY MOTION TO AVOID LIEN OF PREMIER
ALF-1 COMMUNITY CREDIT UNION
9-26-14 [[14](#)]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Premier Community Credit Union (the "Credit Union"), which is not an FDIC-insured institution. The motion will be denied because the moving parties failed to serve the Credit Union in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Credit Union by certified mail to the attention of its named CEO, whereas the rule requires that service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution be by first-class mail. See preamble to Fed. R. Bankr. P. 7004(b).

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

Final ruling:

This is the debtors' motion to value collateral of California Republic Bank (the "Bank"). The motion will be denied for the following reasons. First, 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 by certified mail to the attention of an officer or managing agent, whereas the rule requires service on an FDIC-insured institution, such as the Bank, 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. See Fed. R. Bankr. P. 7004(b)(3). If service on an FDIC-insured institution to the attention of an officer or managing agent were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.

Second, the proof of service states that service was made on September 10, 2014, whereas the documents were not signed until September 30, 2014 (declaration) and October 1, 2014 (motion and notice).

Third, the motion is not supported by evidence sufficient to demonstrate that the moving parties are entitled to the relief requested, as required by LBR 9014-1(d)(6). The debtors state in their declaration: "We are informed and believe that on the date that we filed our case, the Collateral was worth \$8,882.00. We were further informed by a Kelly Blue Book Valuation of the Collateral attached to our Motion as EXHIBIT A." Debtors' declaration, filed October 1, 2014, at 2:6-8. Exhibit A to the declaration is a copy of a Kelley Blue Book printout indicating that the private party value for a 2010 Dodge Charger in excellent condition is \$8,882, whereas the private party value is not the standard the court is to apply when valuing personal property acquired for personal, family, or household purposes.¹ Instead, the court is to consider the property's "replacement value." § 506(a)(2). "Replacement value" is defined as "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined" (*id.*), whereas the Kelley Blue Book defines its private party value as "the starting point for negotiation of a used-car sale between a private buyer and seller."²

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

1 The court assumes the vehicle was acquired by the debtors for personal, family, or household purposes, as the debtors do not have a business.

2

http://www.kbb.com/dodge/charger/2010-dodge-charger/sedan-4d/?condition=excellent&vehicleid=261488&intent=trade-in-sell&mileage=115000&pricetype=private-party&persistedcondition=excellent&printable=true&previouspagename=yymmtrimtisellovr_selltrade (last visited Oct. 27, 2014).

7. [14-28322](#)-D-13 VICTOR/RENEE PADILLA OBJECTION TO CONFIRMATION OF
RCO-1 PLAN BY CREDITOR U.S. BANK,
N.A.
9-9-14 [[18](#)]

Final ruling:

This case was dismissed on October 23, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

8. [14-28322](#)-D-13 VICTOR/RENEE PADILLA OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
10-3-14 [[23](#)]

Final ruling:

This case was dismissed on October 23, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

9. [14-28124](#)-D-13 PAUL BREED OBJECTION TO DEBTOR'S CLAIM OF
RDG-1 EXEMPTIONS
9-29-14 [[16](#)]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The objection was brought on the ground that the debtor had failed to file a spousal waiver to permit him to utilize the exemptions provided by Cal. Code Civ. Proc. § 703.140(b). On September 27, 2014, the debtor filed a fully-executed spousal waiver. As a result of the filing of the spousal waiver, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is required.

10. [14-27325](#)-D-13 RYAN/VICTORIA KAMERZELL CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY TRUSTEE
RUSSELL D. GREER
9-5-14 [[15](#)]

11. [14-28125](#)-D-13 CYNTHIA BREED OBJECTION TO DEBTOR'S CLAIM OF
RDG-1 EXEMPTIONS
9-29-14 [[25](#)]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The objection was brought on the ground that the debtor had failed to file a spousal waiver to permit her to utilize the exemptions provided by Cal. Code Civ. Proc. § 703.140(b). On September 27, 2014, the debtor filed a fully-executed spousal waiver. As a result of the filing of the spousal waiver, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is required.

12. [14-28026](#)-D-13 MIGUEL/MARTHA GOMEZ OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
9-19-14 [[27](#)]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. On October 15, 2014, the debtors filed an amended Schedule C. As a result of the filing of the amended Schedule C, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is required.

13. [14-26232](#)-D-13 ADAM/SANDRA LEIGHTON MOTION TO VALUE COLLATERAL OF
BSH-2 GM FINANCIAL
10-8-14 [[71](#)]

Final ruling:

This is the debtors' motion to value collateral of GM Financial ("GM"). The motion will be denied because the moving parties failed to serve GM in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served GM to the attention of an "Officer, General or Managing Partner, or Agent for Service of Process," whereas the rule required service to the attention of an officer, managing or general agent, or agent for service of process. Further, the moving parties failed to serve GM at the address on its request for special notice in this case, DN 8.

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

14. [14-27334](#)-D-13 STEVEN/CYNTHIA PETLANSKY CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
9-5-14 [[17](#)]

15. [13-33639](#)-D-13 ROSEMARY GUTIERREZ MOTION TO MODIFY PLAN
PGM-1 9-22-14 [[22](#)]

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.

16. [14-28039](#)-D-13 MARCO PIEDRA OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
9-19-14 [[26](#)]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. On September 22, 2014, the debtor filed an amended Schedule C. As a result of the filing of the amended Schedule C, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is required.

17. [14-28442](#)-D-13 PAUL MILLER OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-3-14 [[31](#)]

18. [14-28245](#)-D-13 REBECA DE PULIDO OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
10-3-14 [[23](#)]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

Tentative ruling:

This is the debtor's objection to the arrearage portion of the claim of U.S. Bank (the "Bank"), Claim No. 4. Nationstar Mortgage, LLC ("Nationstar"), as servicer for the Bank, has filed opposition, along with an amended proof of claim. Technically, the filing of the amended proof of claim moots the debtor's objection to the original claim. However, it appears from the debtor's objection that the debtor would oppose the amended proof of claim as well as the original; thus, the court will construe the objection as an objection to the amended claim. For the following reasons, the objection will be overruled.

The original proof of claim asserted a pre-petition arrearage of \$529.18, consisting of an escrow shortage. An Annual Escrow Account Disclosure Statement dated January 2, 2014 (the "Disclosure Statement"), attached to the proof of claim, showed a total escrow shortage of \$336.21 as of the debtor's petition date, December 20, 2013. The debtor indicated in his objection he objects to both figures, and requests that the arrearage claim be limited to \$87.31, the figure shown on the Disclosure Statement as the "Total Escrow Funds Advanced by Your Servicer at Filing Date." The debtor contends his objection should be sustained because the Bank "has not provided proof" that an escrow shortage of either \$529.18 or \$336.21 exists.

In response, Nationstar has filed an amended claim asserting a pre-petition arrearage of \$336.21 rather than \$529.18. It can be determined from the attached Disclosure Statement (the same one that was also attached to the original proof of claim) that the \$336.21 figure is comprised of (1) the total escrow funds advanced by the servicer as of the petition date, \$87.31, and (2) the balance required at filing to maintain the cushion allowed under RESPA,¹ \$248.90. The debtor's objection, apparently, is that Nationstar has failed to provide proof of the amount required to maintain the RESPA cushion. The argument represents a misunderstanding of the burdens of proof, production, and persuasion on a claim objection because, in short, it overlooks the effect of Fed. R. Bankr. P. 3001(f).

A properly filed proof of claim "constitute[s] prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). That is, it is "'strong enough to carry over a mere formal objection without more.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (citation omitted). "To defeat the claim, the objector must come forward with sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.' . . . 'If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence.'" Id. (citations omitted).

Here, the debtor has not suggested the proof of claim was not properly filed or is for any reason facially deficient. Thus, the proof of claim constitutes prima facie evidence of the validity and amount of the claim, including the arrearage claim, and the debtor had the burden to produce evidence tending to show that the amount of the arrearage claim is inaccurate. However, the debtor failed to submit any evidence at all; thus, he has failed to shift the burden back to the Bank to prove the amount of the claim. Accordingly, the objection will be overruled.

The court will hear the matter.

1 The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601, et seq.

20. [14-28464](#)-D-13 CRISANTO/ANNA DE CASTRO OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
10-3-14 [[36](#)]
21. [14-28464](#)-D-13 CRISANTO/ANNA DE CASTRO OBJECTION TO CONFIRMATION OF
SW-1 PLAN BY CREDITOR FINANCIAL,
INC.
9-25-14 [[33](#)]
22. [14-26371](#)-D-13 VICTOR/VICKI CHAO CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
8-11-14 [[23](#)]

23. [14-25673](#)-D-13 STEVEN TUCKER
RJ-3

MOTION TO CONFIRM PLAN
9-23-14 [[89](#)]

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 all creditors, as required by Fed. R. Bankr. P. 2002(b). The debtor has listed eight tenants on his Schedule G filed in this case - all are listed only by the word "tenant," with no names or addresses, although the address of the rental property is listed in the second column as part of the description of the lease, as for example: "Month to Month, there is NO lease for \$1000 monthly 252 N Patton Ave Stockton, CA 95215." It is apparently the debtor's position that he was not required to list his tenants by name and address, or to list them on his master address list, because - the tenants' leasehold interests being only month-to-month - the tenants are not "creditors."

This conclusion represents an incorrect interpretation of the definition of "creditor," as used in the Bankruptcy Code. Minimal research into the case law concerning § 101(5) and (10) of the Code discloses an extremely broad interpretation of "creditor," certainly one including individuals who, on the date of filing of the debtor's petition, were renting property from the debtor, even if only for the remainder of the month.

The debtor failed to list his tenants by name and address on his master address list, as required by Fed. R. Bankr. P. 1007(a)(1), and failed to serve the tenants with this motion, as required by Fed. R. Bankr. P. 2002(b). As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

24. [14-28196](#)-D-13 SINNATHA KEOMANIVONG
RCO-1

OBJECTION TO CONFIRMATION OF
PLAN BY EVERBANK
9-22-14 [[25](#)]

Final ruling:

This case was dismissed on October 23, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

25. [14-28196](#)-D-13 SINNATHA KEOMANIVONG
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-3-14 [[28](#)]

Final ruling:

This case was dismissed on October 23, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

26. [12-29798](#)-D-13 ERIC/EMMARI CALAYAN CONTINUED OBJECTION TO CLAIM OF
TBK-8 JPMORGAN CHASE BANK, N.A.,
CLAIM NUMBER 14
8-15-14 [[102](#)]
27. [09-24117](#)-D-13 THOMAS/YVETTE RIOS MOTION TO VALUE COLLATERAL OF
JDP-2 JP MORGAN CHASE BANK, N.A.
10-17-14 [[101](#)]
28. [09-40432](#)-D-13 CARLOS/TINA WILSON MOTION TO VALUE COLLATERAL OF
JDP-2 REAL TIME RESOLUTIONS, INC.
10-15-14 [[70](#)]
29. [14-26232](#)-D-13 ADAM/SANDRA LEIGHTON MOTION TO VALUE COLLATERAL OF
BSH-3 ONE MAIN FINANCIAL
10-11-14 [[77](#)]

Final ruling:

This is the debtors' motion to value collateral of One Main Financial ("One Main"). The motion will be denied because the moving parties failed to serve One Main in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served One Main to the attention of an "Officer, General or Managing Partner, or Agent for Service of Process," whereas the rule required 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.

30. [11-25162](#)-D-13 RONNIE/GLORIA MOISES MOTION TO VALUE COLLATERAL OF
SAC-1 CITIBANK, N.A.
10-17-14 [[73](#)]
31. [10-33270](#)-D-13 OSCAR/ANITA CATBAGAN MOTION TO INCUR DEBT
CA-4 10-14-14 [[63](#)]
32. [14-26371](#)-D-13 VICTOR/VICKI CHAO MOTION TO APPROVE LOAN
HN-2 MODIFICATION
10-21-14 [[65](#)]