

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 18, 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.	14-22102-D-13	SAUL/ADRIANA GARCIA	MOTION FOR RELIEF FROM
	BHT-1		AUTOMATIC STAY
	CHRISTIANA TRUST VS.		10-7-14 [48]

2.	14-28507-D-13	SADDI/SHAUNNA SIMON	OBJECTION TO CONFIRMATION OF
	RDG-1		PLAN BY RUSSELL D. GREER
			10-21-14 [17]

Final ruling:

The objection will be overruled as moot. The debtors filed an amended plan on November 12, 2014, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

3. 14-28408-D-13 JOAQUIN/MARTHA RAMON MOTION TO VALUE COLLATERAL OF
TOG-3 BANK OF AMERICA, N.A.
10-8-14 [22]

4. 14-28709-D-13 JAMES/ERICKA BARNEY MOTION TO VALUE SECURED PORTION
ALF-2 OF CLAIM OF STONEWOOD NO. 1
10-21-14 [31]

Final ruling:

This is the debtors' motion to value the secured claim of Stonewood No. 1 ("Stonewood") at \$0. The motion will be denied because the moving parties failed to serve Stonewood in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Stonewood by certified mail to the attention of its agent for service of process, 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.

5. 14-28709-D-13 JAMES/ERICKA BARNEY OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
10-21-14 [28]

6. 14-30012-D-13 SEN NGUYEN AND EN CU MOTION TO VALUE COLLATERAL OF
MJH-1 PNC BANK, N.A.
10-8-14 [8]

Final ruling:

This is the debtors' motion to value collateral of PNC 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 by certified mail to the attention of an officer, managing or general agent, or other agent authorized to receive service of process,

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, managing or general agent, or other agent authorized to receive service of process were appropriate, the distinction in the manner of service, as 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.

7. 14-28713-D-13 MARC/PATRICIA HILLMAN OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-21-14 [19]

8. 14-30013-D-13 ALICIA SANTOS MOTION TO VALUE COLLATERAL OF
MJH-1 HSBC USA BANK, N.A.
10-8-14 [8]

Final ruling:

This is the debtor's motion to value collateral of HSBC Bank USA, NA (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 by certified mail to the attention of an officer, managing or general agent, or other agent authorized to receive service of process, 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, managing or general agent, or other agent authorized to receive service of process were appropriate, the distinction in the manner of service, as 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. 09-36322-D-13 ROBERT/WENDY HERRERA MOTION TO VALUE COLLATERAL OF
CJY-1 PNC BANK, N.A.
10-22-14 [94]
10. 14-28526-D-13 DANNY/LUISA ACAIN OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-21-14 [32]
11. 14-20730-D-13 CLEOPATRA CAYENNE MOTION TO MODIFY PLAN
CAH-1 9-15-14 [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.

12. 14-25132-D-13 KAREN CLEARY MOTION TO CONFIRM PLAN
RLG-3 10-15-14 [44]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party gave only 34 days' notice of the hearing rather than 42 days', as required by LBR 3015-1(d) (1) and applicable rules.

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

13. 14-26232-D-13 ADAM/SANDRA LEIGHTON MOTION TO CONFIRM PLAN
BSH-1 9-26-14 [66]

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 IRS at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(c); (2) the motion states that the debtors are seeking to confirm a first amended plan, but there is no such plan on file: the plan filed with the motion is entitled simply "Chapter 13 Plan"; and (3) the plan provides for the secured claims of GM Financial and One Main Financial at less than the full amounts of their claims, whereas the debtors' motions to value the collateral securing those claims have been denied and no new motions have been filed. Thus, the debtors have not complied with LBR 3015-1(j).

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

14. 14-28937-D-13 ASMAR ERVIN AMENDED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
11-3-14 [22]

15. 14-28039-D-13 MARCO PIEDRA OBJECTION TO DEBTOR'S CLAIM OF
RDG-5 EXEMPTIONS
9-26-14 [36]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. On October 17, 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.

16. 14-20141-D-13 JUAN/ELIZABETH MENDEZ MOTION TO CONFIRM PLAN
LR-6 10-3-14 [108]

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.

17. 14-23543-D-13 DAVID GREENE MOTION TO CONFIRM PLAN
JCB-2 9-16-14 [65]

18. 14-28148-D-13 CESAR/BETTY DEL ROSARIO MOTION TO CONFIRM PLAN
JCK-3 9-25-14 [26]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the plan provides for the secured claims of CACH, LLC, Capital One Bank, and HFC / Beneficial California at \$0, whereas the court will deny the debtors' motions to avoid the judicial liens held by those creditors (Items 19, 20, and 21 on this calendar); thus, the debtors have failed to obtain orders avoiding those liens, as required by LBR 3015-1(j).

The motion will be denied by minute order. No appearance is necessary.

19. 14-28148-D-13 CESAR/BETTY DEL ROSARIO MOTION TO AVOID LIEN OF CACH,
JCK-4 LLC
9-25-14 [31]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by CACH, LLC (the "Creditor"). The motion will be denied because the moving parties have failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate that the moving parties are entitled to the relief requested, as required by LBR 9014-1(d)(6). "There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added).

In order to avoid a judicial lien, "the debtor must make a competent record on all elements of the lien avoidance statute, 11 U.S.C. § 522(f)." Mohring, 142 B.R. at 391. Here, there is insufficient evidence of a judicial lien held by the Creditor in the amount asserted by the debtors, recorded in the county in which the debtors' property is located. The debtors have filed as exhibits copies of an unrecorded abstract of judgment and a printout indicating that a judgment - some judgment - in favor of the Creditor was recorded. There is no copy of the recorded abstract of judgment on file; and the printout is not sufficient evidence that the

abstract of judgment filed as an exhibit is the judgment referred to in the printout. Thus, the debtors have failed to demonstrate that the Creditor holds a judicial lien that impairs the debtors' exemption.

"The operative principle here is that although bankruptcy confers substantial benefits on the honest but unfortunate debtor, including a discharge of debts, the ability to retain exempt property, and the ability to avoid certain liens that impair exemptions, there is a price." Mohring, 142 B.R. at 396. Obtaining a copy of the recorded abstract of judgment seems a small price to pay to avoid an otherwise valid and enforceable property interest.

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

20. 14-28148-D-13 CESAR/BETTY DEL ROSARIO MOTION TO AVOID LIEN OF
JCK-5 HOUSEHOLD FINANCE CORP
(HFC-USA)/BENEFICIAL CALIFORNIA
9-25-14 [36]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Household Finance Corp. (HFC-USA) / Beneficial California (the "Creditor"). The motion will be denied because the moving parties have failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate that the moving parties are entitled to the relief requested, as required by LBR 9014-1(d)(6). "There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added).

In order to avoid a judicial lien, "the debtor must make a competent record on all elements of the lien avoidance statute, 11 U.S.C. § 522(f)." Mohring, 142 B.R. at 391. Here, there is insufficient evidence of a judicial lien held by the Creditor in the amount asserted by the debtors, recorded in the county in which the debtors' property is located. The debtors have filed as exhibits copies of an unrecorded abstract of judgment and a printout indicating that a judgment - some judgment - in favor of the Creditor was recorded. There is no copy of the recorded abstract of judgment on file; and the printout is not sufficient evidence that the abstract of judgment filed as an exhibit is the judgment referred to in the printout. Thus, the debtors have failed to demonstrate that the Creditor holds a judicial lien that impairs the debtors' exemption.

"The operative principle here is that although bankruptcy confers substantial benefits on the honest but unfortunate debtor, including a discharge of debts, the ability to retain exempt property, and the ability to avoid certain liens that impair exemptions, there is a price." Mohring, 142 B.R. at 396. Obtaining a copy of the recorded abstract of judgment seems a small price to pay to avoid an otherwise valid and enforceable property interest.

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

21. 14-28148-D-13 CESAR/BETTY DEL ROSARIO
JCK-6

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
9-25-14 [41]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Capital One Bank (USA), N.A. (the "Creditor"). The motion will be denied because the moving parties have failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate that the moving parties are entitled to the relief requested, as required by LBR 9014-1(d)(6). "There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added).

In order to avoid a judicial lien, "the debtor must make a competent record on all elements of the lien avoidance statute, 11 U.S.C. § 522(f)." Mohring, 142 B.R. at 391. Here, there is insufficient evidence of a judicial lien held by the Creditor in the amount asserted by the debtors, recorded in the county in which the debtors' property is located. The debtors have filed as exhibits copies of an unrecorded abstract of judgment and a printout indicating that a judgment - some judgment - in favor of the Creditor was recorded. There is no copy of the recorded abstract of judgment on file; and the printout is not sufficient evidence that the abstract of judgment filed as an exhibit is the judgment referred to in the printout. Thus, the debtors have failed to demonstrate that the Creditor holds a judicial lien that impairs the debtors' exemption.

"The operative principle here is that although bankruptcy confers substantial benefits on the honest but unfortunate debtor, including a discharge of debts, the ability to retain exempt property, and the ability to avoid certain liens that impair exemptions, there is a price." Mohring, 142 B.R. at 396. Obtaining a copy of the recorded abstract of judgment seems a small price to pay to avoid an otherwise valid and enforceable property interest.

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

22. 11-42949-D-13 JAMES/GWENDOLYN HARRISON
DMR-2

MOTION TO MODIFY PLAN
10-9-14 [117]

23. 13-35763-D-13 DANIEL CHAN
SJS-3

MOTION TO MODIFY PLAN
10-8-14 [60]

24. 14-26468-D-13 ALICE HATTON
NLG-1

OBJECTION TO CONFIRMATION OF
PLAN BY SETERUS, INC.
10-2-14 [41]

Final ruling:

This is the objection of Seterus, Inc. to the debtor's amended chapter 13 plan filed September 18, 2014. Because the plan objected to is not the debtor's original plan, the procedure for the creditor filing and noticing an objection to confirmation is no longer applicable in this case. See LBR 3015-1(c)(4). If the debtor wishes to seek confirmation of the amended plan, it is incumbent on her to file a motion to confirm it and set it for hearing. See LBR 3015-1(d)(1). If and when a motion to confirm the amended plan is filed, Seterus will have an opportunity to oppose it. For these reasons, Seterus's objection will be overruled as unnecessary. The objection will be overruled by minute order. No appearance is necessary.

25. 14-28469-D-13 KELLY BENNETT
MDE-1

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
9-22-14 [13]

26. 14-25673-D-13 STEVEN TUCKER
RJ-2

MOTION TO CONFIRM PLAN
9-17-14 [83]

Final ruling:

The debtor has filed a second amended notice of hearing giving notice that the hearing on this motion will be held on December 16, 2014. Thus, the court will issue a minute order indicating that the hearing has been continued to that date. No appearance is necessary on November 18, 2014. The moving party's counsel should note, however, that it appears the moving party served only the motion, notice of hearing, and supporting declaration, and not the plan itself. See proofs of service

30. 12-25179-D-13 LARRY/CARRIE STAMPER CONTINUED MOTION TO MODIFY PLAN
JCK-4 8-22-14 [71]
31. 14-28682-D-13 ARMANDO/LINDA MARTINEZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER,
CHAPTER 13 TRUSTEE
10-21-14 [17]
32. 12-26983-D-13 FRANK DAY MOTION TO MODIFY PLAN
LRR-7 9-29-14 [80]
33. 13-24789-D-13 RONALD/NICOLE TILLMAN MOTION TO MODIFY PLAN
MC-4 10-1-14 [90]

34. 14-28090-D-13 JOSEPH CLARK MOTION TO VALUE COLLATERAL OF
PGM-1 PROVIDENT SAVINGS BANK, FSB AND
SPECIALIZED LOAN SERVICING, LLC
10-20-14 [31]

Final ruling:

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

35. 14-28592-D-13 JAMES/LEI BAIDOO OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
10-21-14 [26]

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.

36. 14-29592-D-13 JAMES/KATHERINE JONES MOTION TO VALUE COLLATERAL OF
JCK-1 GREEN TREE SERVICING, LLC
9-29-14 [8]

Final ruling:

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

37. 14-28709-D-13 JAMES/ERICKA BARNEY MOTION TO AVOID LIEN OF PREMIER
ALF-3 COMMUNITY CREDIT UNION
11-4-14 [41]

38. 12-23432-D-13 AARON/JULIE SMITH MOTION TO SELL
HWW-2 11-4-14 [42]
39. 12-23432-D-13 AARON/JULIE SMITH MOTION TO INCUR DEBT
HWW-3 11-4-14 [45]
40. 14-25132-D-13 KAREN CLEARY MOTION TO INCUR DEBT AND/OR
RLG-4 MOTION TO APPROVE LOAN
MODIFICATION
10-28-14 [55]

Final ruling:

This is the debtor's motion to incur debt and to authorize a loan modification. The motion will be denied for the following reasons: (1) the moving party gave only 21 days' notice of the hearing rather than 28 days', as required for notices such as the one served here, which purports to require the filing of written opposition 14 days prior to the hearing date (see LBR 9014-1(f)(1)); and (2) the moving party served only Wells Fargo Bank, and failed to serve the trustee, the United States Trustee, or any of the other creditors in the case.

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

41. 14-27334-D-13 STEVEN/CYNTHIA PETLANSKY CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
9-5-14 [17]

42. 11-48797-D-13 JEROME CLAY

MOTION TO SEAL BANKRUPTCY
RECORDS
10-30-14 [61]

CASE DISMISSED 2/27/12

43. 12-33466-D-13 RANDALL/DENISE VOLLBRECHT
MSM-1

MOTION TO SELL O.S.T.
11-7-14 [40]