

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

December 2, 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.	09-42700-D-13	CHARANJIT SINGH	MOTION TO VALUE COLLATERAL OF
	JDP-1		JP MORGAN CHASE BANK, N.A.
			10-27-14 [68]

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. 09-42700-D-13 CHARANJIT SINGH MOTION TO VALUE COLLATERAL OF
JDP-2 WELLS FARGO BANK, N.A.
10-27-14 [72]

Final ruling:

The matter is resolved without oral argument. This is the debtor's 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.

3. 12-28604-D-13 WILLIAM/GINA CRONIN MOTION TO MODIFY PLAN
DCJ-6 10-21-14 [111]

4. 14-29812-D-13 ANDRE COOPER AND KIMBERLY MOTION FOR RELIEF FROM
APN-1 GILLIAM AUTOMATIC STAY
HYUNDAI MOTOR FINANCE VS. 10-23-14 [13]

Final ruling:

This matter is resolved without oral argument. This is Hyundai Motor Finance's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtors are not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. Accordingly, the court will grant relief from stay by minute order. As the debtors are not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

Tentative ruling:

This is the debtors' second motion to value collateral of California Republic Bank (the "Bank"); namely, a 2010 Dodge Charger. The Bank has filed opposition. For the following reasons, the motion will be granted in part.

The debtors earlier sought to value the collateral at the same amount they seek here, \$8,882. The earlier motion was denied because, among other reasons, the motion was not supported by evidence sufficient to demonstrate that the moving parties were entitled to the relief requested. In support of their first motion, the debtors cited a Kelley Blue Book ("KBB") printout indicating that the private party value for a 2010 Dodge Charger in excellent condition was \$8,882. As the court pointed out in its ruling on that motion, the court is to consider not the vehicle's private party value but rather its replacement value, defined as the price a retail merchant would charge for a vehicle of the same kind considering the age and condition of the vehicle. See Bankruptcy Code § 506(a)(2).

This time, the debtors claim the vehicle's replacement value is \$8,882, the same value they previously claimed to be its private party value. This time, they have submitted a KBB online ad by Sun Valley Motors in Sacramento for a 2010 Dodge Charger SXT with an asking price of \$10,599. The debtors state the vehicle described in the ad "has similar options and is in similar condition to [the debtors'] vehicle, but has only 83,847 miles" (Debtors' Decl., filed Nov. 3, 2014, at 2:9-10), whereas the debtors' vehicle has 106,000 miles. For that reason, and "based on [their] car-buying experience and [their] general knowledge that car dealers mark up the prices of their used vehicles" (id. at 2:10-12), the debtors conclude that "[they] believe that the asking price is subject to fair negotiation of approximately \$1,000.00 below the asking price of \$10,599.00." Id. at 2:12-13.

There are several problems with this approach. First, the debtors do not state how they come to know that the vehicle in the ad is in similar condition to theirs. The debtors' exhibit in support of their original motion listed the private party value for a similar vehicle in excellent condition. Thus, the court infers that the debtors' vehicle is in excellent condition, whereas the ad does not indicate the condition of the vehicle being offered at \$10,599. Thus, the ad and the debtors' opinion based on it are not very helpful to the court in determining the price a retail merchant would charge for a vehicle of the same kind as the debtors' considering the age and condition of the debtors' vehicle. Second, the exhibit in support of the debtors' first motion gave the private party value for a vehicle with 115,000 miles, whereas the debtors now testify their vehicle has 106,000 miles. This discrepancy is not explained. Third, dropping the asking price by \$1,000, as the debtors suggest, would yield a value of \$9,599, which is \$717 higher than the \$8,882 value the debtors are seeking. This discrepancy is not explained. Fourth, the debtors offer no evidence they are qualified to make a determination of a vehicle's replacement value, as defined in the Code, based on expert knowledge of dealer mark-ups or what would represent a fair negotiation downward. For these reasons, the court gives little, if any, weight to the debtors' opinion.

The Bank, on the other hand, has submitted a KBB pricing report for the price one would expect to pay to buy a used 2010 Dodge Charger from a dealer. The KBB gives a "fair market range" of values between \$9,723 at the low end and \$12,866 at

the high end. In between are the "suggested retail price," \$11,995, and the "fair purchase price," \$11,295. In the opinion of the Bank's AVP/Loss Mitigation Manager, the \$11,995 and \$9,723 values are the approximate retail and wholesale values of the vehicle, respectively. Thus, the Bank contends the value of its collateral should be determined to be at least \$11,995.

According to the KBB, the "fair market range" is "Kelley Blue Book's estimate of what you can reasonably expect to pay this week . . . when purchasing from a dealer." Kelley Blue Book, "Frequently Asked Questions (FAQ)," http://www.kbb.com/company/faq/used-cars/#uc_4 (last visited Nov. 18, 2014). The "suggested retail price" is "representative of dealers' asking prices." Id. "The final sale price will likely be less depending on the vehicle's actual condition, popularity, type of warranty offered and local market conditions." Id. The "fair purchase price" is "the price that Kelley Blue Book has determined people are typically paying a dealer" Id. "This price is based on actual used-car transactions and adjusted regularly as market conditions change." Id.

The court finds that these values are much better evidence than the debtors' opinion of the standard the court is to consider in determining motions under § 506(a) - the "price a retail merchant would charge." Thus, the court gives considerably more weight to the Bank's evidence than to the debtors'. However, the court does not agree with the Bank that the "suggested retail price" best represents the "price a retail merchant would charge." That price is representative of what dealers are asking; the "fair purchase price" is more representative of what they are actually charging. Thus, the court concludes that the replacement value of the debtors' vehicle is \$11,295. The court will grant the motion in part and, for purposes of this motion only, set the Bank's secured claim at \$11,295.

The court will hear the matter.

6. 14-28713-D-13 MARC/PATRICIA HILLMAN MOTION TO CONFIRM PLAN
JCK-1 10-17-14 [14]
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.

7. 14-26714-D-13 JOSE/DORA CERVANTES MOTION TO CONFIRM PLAN
TOG-2 10-11-14 [30]
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.

8. 14-27314-D-13 JUAN HERNANDEZ AND MARIA MOTION TO CONFIRM PLAN
TOG-2 ROMAN 10-10-14 [23]

9. 13-35121-D-13 CHRISTOPHER/SAMANTHA MOTION TO MODIFY PLAN
SDM-1 EWING 10-22-14 [24]

10. 14-28124-D-13 PAUL BREED MOTION TO CONFIRM PLAN
MRL-1 10-13-14 [24]

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 the Franklin County CSEA (Franklin County Child Support Enforcement Agency), which has filed a priority claim for \$9,864.09. Thus, the moving party has failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). In addition, as the trustee observes, the plan does not provide for this priority claim; thus, the plan does not comply with § 1322(a)(2) of the Bankruptcy Code. Finally, although the moving papers refer to an amended plan, the plan filed with the motion is entitled simply "Chapter 13 Plan," with nothing in the title to distinguish it from the debtor's original plan. Thus, the proof of service, which purports to evidence service of the "Debtor's Chapter 13 Plan," fails to clearly evidence service of one or the other.

For the reasons stated, the motion will be denied, and the court need not address the issues raised by the Internal Revenue Service at this time. The motion will be denied by minute order. No appearance is necessary.

11. 14-28125-D-13 CYNTHIA BREED MOTION TO CONFIRM PLAN
MRL-1 10-13-14 [36]

12. 14-28526-D-13 DANNY/LUISA ACAIN
JCK-3

MOTION TO CONFIRM PLAN
10-17-14 [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.

13. 14-24633-D-13 CYNTHIA WILLIAMS
BER-1
FINANCIAL CENTER CU VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-23-14 [21]

Final ruling:

This matter is resolved without oral argument. This is Financial Center Credit Union's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. Accordingly, the court will grant relief from stay by minute order. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

14. 13-26034-D-13 GARY/SABRINA SCHWARTZ
TBK-7

OBJECTION TO CLAIM OF WELLS
FARGO BANK, N.A., CLAIM NUMBER
10
10-15-14 [111]

Tentative ruling:

This is the debtors' objection to the arrearage portion of the claim of Wells Fargo Bank (the "Bank"), Claim No. 10. The Bank has filed opposition. For the following reasons, the objection will be sustained in part.

The Bank's arrearage claim totals \$5,096.07, which is comprised of late charges, \$70.53, an escrow shortage, \$198.70, and installment payments allegedly due April 1, May 1, and June 1, 2013, at \$1,776.95 each, or \$5,330.85 for the three, minus \$504.01 in "unapplied funds." The debtors, on the other hand, contend the arrearage claim should total only \$1,329.04.

First, the debtors' calculations leading to their \$1,329.04 figure pertain only to the amounts of the missed installment payments, and do not include the late fees or the escrow shortage. However, the debtors do not challenge the late fees or the escrow shortage in any way; thus, the court concludes those portions of the arrearage claim are not objected to.

The debtors' theory as to the missed installment payments is based on a Temporary Forbearance Agreement (the "Agreement") entered into pre-petition between the debtors and the Bank, which permitted them to reduce their normal monthly payment, \$1,776.95, to \$1,444.69 for the months of February, March, April, May, June, and July 2013. The debtors claim they made those payments, at \$1,444.69 each, for four months - February, March, April, and May 2013. Thus, they contend they owe only the difference between the regular payment, \$1,776.95, and the reduced payment, \$1,444.69, for four months, for a total of \$1,329.04. The debtors' objection is supported by (1) their declaration; (2) a copy of what appears to be the first page of a multi-page letter dated January 7, 2013 from the Bank to the debtors entitled "Temporary Forbearance Agreement"; (3) a two-page document from Wells Fargo entitled "Customer Account Activity Statement"; and (4) copies of the debtors' bank statements showing a \$1,459.69 payment made by direct debit in February 2013 and \$1,444.69 payments made by direct debit in March, April, and May 2013.

The Bank does not dispute that the Agreement was entered into, and does not dispute that the debtors made payments in each of the four months - February, March, April, and May. However, the Bank contends (1) the debtors made only a partial payment for January 2013; (2) their February 2013 payment of \$1,444.69 was returned to them after they claimed the Bank was not authorized to take the payment by automatic withdrawal from their bank account; (3) the payments for March, April, and May 2013 were incomplete; and (4) the debtors failed to make a payment for June 2013. The Bank concludes:

In light of the incomplete payment in January, 2013, the returned payment in February, 2013, the incomplete payments for March to May, 2013, and the missed payment in June 2013, the Debtors were three payments in arrears at the time of conversion, less \$504.01 from suspense due to the incomplete payments. In light of the above as well as Debtors' exhibits that support Creditor's claim and Creditor's payment history, the missed payments in Creditor's claim are accurate and should be allowed in full.

Bank's Opposition, filed Nov. 18, 2014, at 5:17-22. The underlying premises are accurate: the debtors apparently did make an incomplete payment in January; their February payment was returned to them; their March, April, and May payments were incomplete (that is, they were in the reduced amount permitted by the Agreement); and the debtors did not make the June payment. However, the conclusion that the debtors were delinquent by three full payments is not correct. Thus, the amount of the arrearage claim is not accurate.

The court will begin with both parties' assumption that the relevant date for determining the pre-petition arrearage amount is the date this case was converted from chapter 7 to chapter 13, June 5, 2013. The court finds, instead, that the relevant date is the date the petition was filed, April 30, 2013. Pursuant to Fed. R. Bankr. P. 3001(c)(2)(A) and (B), a proof of secured claim in an individual's case must include "a statement of the amount necessary to cure any default as of the date of the petition" Thus, Official Form 10 includes a space for the creditor to list the "[a]mount of arrearage and other charges, as of the time [the] case was filed . . . , if any." The court finds nothing in § 348 of the Bankruptcy Code (effect of conversion) that would change that conclusion. Thus, the court will calculate the pre-petition arrearage as of the petition date, April 30, 2013.

According to the Bank's Customer Account Activity Statement, submitted by the debtors, and the Bank's payment history, submitted by the Bank, the debtors made their January 2013 payment on January 31, 2013. The amount they paid was \$1,459.69,

of which \$1,444.69 was placed in suspense and \$15 was applied to some sort of fee. Thus, it appears the debtors thought their reduced payment amount, \$1,444.69, was to begin with the January payment, although the Agreement shows it as beginning with the February payment. There is no evidence to show what the amount due for January actually was. The Bank assumes in its opposition that the amount was \$1,776.95; however, there is no evidence to that effect. The Bank's payment history shows the payment was \$1,833.78 for October 2012 and \$1,763.25 for November and December 2012. It is simply impossible to determine from the evidence what the regular monthly payment was for January 2013. However, the Bank's proof of claim explicitly includes missed payments for the installment payments due April 1, May 1, and June 1, 2013; thus, the court concludes that the arrearage claim does not include any amount for the January payment.

The debtors acknowledge that the regular amount due for February through May was \$1,776.95 per month, whereas they claim they made payments of only \$1,444.69 for each of those four months, pursuant to the Agreement. The problem is that both the debtors' evidence - the Customer Account Activity Statement - and the Bank's evidence - the payment history - demonstrates that the February payment was reversed and not replaced. The Bank states in its opposition that this was because the debtors challenged the Bank's automatic withdrawal of the \$1,444.69 from their bank account and the Bank put the money back in their bank account. Although this statement is without foundation, the documentary evidence does show that the payment was reversed and not replaced. Thus, at the time their case was filed, April 30, 2013, the debtors had failed to make the February payment, the full amount of which was \$1,776.95. They had paid \$1,444.69 each for March and April, short of the full payment by \$332.26 each; thus, for those two months, the debtors were delinquent by \$664.52.

Based on the foregoing, the court concludes that the amount of the Bank's arrearage claim as of the petition date was \$2,206.69, made up of the following:

February 2013 payment	\$1,776.95
Shortage of March & April payments	\$ 664.52
Late charges	\$ 70.53
Escrow shortage	\$ 198.70
Less unapplied funds	< \$ 504.01 >
Total	\$2,206.69

For the reasons stated, the objection will be sustained in part, and the Bank's arrearage claim will be disallowed in any amount in excess of \$2,206.69. The court will hear the matter.

15. 14-28240-D-13 GLORIA ROBERTS-JENKINS
KAZ-1

MOTION TO APPROVE STIPULATION
TO RESOLVE MOTION TO VALUE PLAN
TREATMENT WITH REGARDS FIRST
LIEN ON REAL PROPERTY
10-24-14 [32]

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 approve stipulation to resolve motion to value plan treatment with regards first lien on real property located at 2259 Sheridan Way, Stockton, California (the "Motion") is supported by the record. As such the court will grant the Motion and approve the stipulation by minute order. No appearance is necessary.

16. 14-27541-D-7 JAMES TEETERS
PLC-2

MOTION TO CONVERT CASE TO
CHAPTER 13
10-29-14 [23]

Final ruling:

This is the debtor's motion to convert this chapter 7 case to a chapter 13 case. The motion will be denied for the following reasons. First, the motion was set for hearing on a date reserved for hearings in chapter 13 cases, whereas this is a chapter 7 case. Second, the notice of hearing does not comply with the court's local rules. First it states that no party in interest shall be required to file a written opposition; however, it goes on to state: "If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it before the date of the hearing on this motion. You must also mail a copy of any written and filed response to the Debtor's attorney, . . . [the trustee and the U.S. Trustee] . . ." (Notice of Hearing, filed June 17, 2014, at 2:2-10), adding that "[i]f you or your attorney do not take these steps, the Court may decide that you do not oppose this action and may grant the Motion." Id. at 2:11-12. These steps are not required by the local rules for a motion brought under LBR 9014-1(f) (2). These directions may well have discouraged potential respondents from appearing at the hearing, and should not have been included in the notice. Third, the notice of hearing states that the hearing will take place at 501 I Street - Suite 3-100. Finally, the moving party failed to serve the Employment Development Department at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b).

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

17. 14-23842-D-13 ANGELA WARREN-BASS
JCK-4

MOTION TO CONFIRM PLAN
10-15-14 [71]

Final ruling:

The motion will be denied as moot. The debtor filed a fourth amended plan on November 21, 2014, making this motion moot. As a result the court will deny the motion by minute order. No appearance is necessary.

18. 14-20345-D-13 ERIC BROWN
MSM-1

MOTION TO CONFIRM PLAN
10-16-14 [44]

19. 14-27445-D-13 PETER/LORI KOULOURIS

ORDER TO SHOW CAUSE
10-23-14 [38]

Final ruling:

This is a hearing on the court's amended order to show cause, issued October 23, 2014 (the "OSC"), to which the debtors have filed a response. The hearing will be continued to January 6, 2015, at 10:00 a.m. Each debtor is required to supplement the record in response to the OSC by filing and serving - on the trustee, the United States Trustee, and all creditors in this case - a declaration signed under oath, not later than December 19, 2014, in which, for each of the two cases debtor Peter Koulouris filed in 2010, Case Nos. 10-29779 and 10-33110, in which Lori Koulouris was his attorney, the debtors shall address and cover the following:

1. state whether the schedules filed in the case were, as filed, accurate and complete, and if not, provide any and all information necessary to make them accurate and complete;
2. state whether the Statement of Financial Affairs filed in the case was, as filed, accurate and complete, and if not, provide any and all information necessary to make it accurate and complete;
3. if the response to Item 1, above, is no, state why the schedules, as filed, were not accurate and complete; and
4. if the response to Item 2, above, is no, state why the Statement of Financial Affairs, as filed, was not accurate and complete.

Any party in interest may file a response to the supplemental declarations not later than December 29, 2014. The hearing will be continued by minute order. No appearance is necessary on December 2, 2014.

20. 14-29046-D-13 SHAHZAN ALI

OBJECTION TO CONFIRMATION OF
PLAN BY SURAJ PARKASH PURI
11-4-14 [26]

21. 14-29046-D-13 SHAHZAN ALI OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
11-3-14 [22]
22. 12-23550-D-13 KATHLEEN HARRIS MOTION TO MODIFY PLAN
RAS-1 10-14-14 [99]
23. 12-23550-D-13 KATHLEEN HARRIS CONTINUED MOTION TO APPROVE
RAS-2 LOAN MODIFICATION
9-5-14 [84]
24. 14-27455-D-13 RYAN/LYNDA COHOON MOTION TO CONFIRM PLAN
PLG-1 10-9-14 [25]

25. 14-27455-D-13 RYAN/LYNDA COHOON OBJECTION TO DEBTORS' CLAIM OF
RDG-2 EXEMPTIONS
10-24-14 [32]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. On October 30, 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.

26. 14-26159-D-13 ELIZABETH MIDDLEKAUFF MOTION TO CONFIRM PLAN
MG-2 10-12-14 [61]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because there is no proof of service on file. Thus, the court cannot determine whether the required amount of notice was given or whether all required parties were served at the required addresses. As a result of this service defect, 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.

27. 14-29163-D-13 TIBERIU STEFAN OBJECTION TO CONFIRMATION OF
PLAN BY LAKELEND WEST CAPITAL
XV, LLC
11-4-14 [28]

Final ruling:

This case was dismissed on November 20, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

28. 14-29163-D-13 TIBERIU STEFAN OBJECTION TO CONFIRMATION OF
RDG-3 PLAN BY RUSSELL D. GREER
11-3-14 [21]

Final ruling:

This case was dismissed on November 20, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

29. 14-29465-D-13 ALBERT/MARY HAYNES
APN-1

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
10-24-14 [22]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

30. 13-24666-D-13 ROBERT PINTOR
JM-4

MOTION TO MODIFY PLAN
10-7-14 [66]

Tentative ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. An earlier motion to confirm the same plan was denied because the moving party had failed to serve the IRS, which holds a large priority claim in this case (\$27,996), at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(c). This time, the moving party served the IRS at the correct address, but served only the motion, notice, and supporting declaration, and not the plan itself, as required by LBR 3015-1(d)(2). In other words, the IRS has never been served with the proposed modified plan at its correct address.

As a result of this service defect, the court intends to deny the motion. In the alternative, the court will continue the hearing and require the moving party to file a notice of continued hearing and to serve it, together with the motion, declaration, and proposed modified plan, on the IRS at its Roster address. The earliest date to which the hearing could be continued that would provide at least 35 days' notice (see LBR 3015-1(d)(2)) would be January 6, 2015. If the hearing is continued to that date, the moving party will need to file the notice of continued hearing and serve it and the other documents on the IRS no later than December 2, 2014. Alternatively, the hearing will be continued to January 20, 2015.

The court will hear the matter.

31. 14-30269-D-13 KEVIN DICKERSON AND
MC-1 SHELBY CABILES

MOTION TO VALUE COLLATERAL OF
WELLS FARGO DEALER SERVICES,
INC.
10-31-14 [18]

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. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

32. 12-28185-D-13 ANTOINETTA TREISS MOTION TO CONFIRM PLAN
BSH-4 10-8-14 [145]

Final ruling:

This is the debtor's motion to confirm a chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve the creditors filing Claim Nos. 6 and 7 (their mortgage holders) at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); (2) the moving party failed to serve the creditor requesting special notice at DN 139 at its designated address, as required by the same rule; and (3) the plan filed with the motion is entitled simply "Chapter 13 Plan," with nothing in the title to distinguish it from the debtor's original plan. Thus, the proof of service, which purports to evidence service of the "Chapter 13 Plan," fails to clearly evidence service of one or the other.

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

33. 14-27887-D-13 KENNY JENSEN MOTION TO CONFIRM PLAN
10-13-14 [26]

Final ruling:

The motion will be denied as moot. The debtor filed a second amended plan on November 18, 2014, making this motion moot. As a result the court will deny the motion by minute order. No appearance is necessary.

34. 13-33090-D-13 DANIEL ORTIZ AND KIMBERLY MOTION TO MODIFY PLAN
DN-2 SILVA-HANSON 10-16-14 [35]

35. 12-27294-D-13 MARK/ANGELA HERSMAN CONTINUED MOTION TO INCUR DEBT
JCK-5 10-3-14 [41]

36. 12-27294-D-13 MARK/ANGELA HERSMAN MOTION TO MODIFY PLAN
JCK-6 10-23-14 [48]

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.

37. 12-29798-D-13 ERIC/EMMARI CALAYAN MOTION TO MODIFY PLAN
TBK-9 10-31-14 [108]

38. 09-37409-D-13 OSWALD CRUZ AND AMANDA MOTION TO VALUE COLLATERAL OF
SLE-5 CAMPBELL-CRUZ HSBC MORTGAGE SERVICES, INC.
11-14-14 [66]

Final ruling:

This is the debtors' motion to value collateral of HSBC Mortgage Services, Inc. ("HSBC"). The motion will be denied for the following reasons. First, the proof of service cannot be accurate. In it, the declarant states that service was made and the proof of service was signed on November 15, 2014, whereas the proof of service was filed the day before, November 14, 2014. Therefore, if the dates in the proof of service are accurate, service could not have been made by the time the proof of service was filed. Second, assuming without deciding that service was actually made on November 14, 2014, the moving parties gave only 18 days' notice of the hearing, rather than 28 days', as required for a notice such as this one, that purported to require the filing of written opposition 14 days before the date of the hearing. See LBR 9014-1(f)(1).

Third, the moving papers name the creditor that is the target of the motion as HSBC Mortgage Services, Inc., whereas the moving parties served "HSBC/MS," with no evidence that is the same entity. Fourth, the moving parties served "HSBC/MS" by certified mail, whereas for a corporation such as HSBC that is not an FDIC-insured institution, the rule requires service by first-class mail. See Fed. R. Bankr. P. 7004(b)(3) and preamble to Fed. R. Bankr. P. 7004(b). Fifth, the moving parties failed to also serve HSBC through the attorneys who early on in this case requested special notice on its behalf. This last step was not technically required by Fed.

R. Bankr. P. 7004(b); however, the court finds that this additional simple step should have been taken in the interest of satisfying the court that service was made in a manner "`reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" SEC v. Ross, 504 F.3d 1130, 1138 (9th Cir. 2007), quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

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

39. 14-26614-D-13 VALERIA LABORDE CONTINUED MOTION TO RECONVERT
RDG-3 CASE FROM CHAPTER 13 TO CHAPTER
7
11-4-14 [50]
40. 14-27445-D-13 PETER/LORI KOULOURIS CONTINUED MOTION TO DISMISS
RDG-3 CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE FOR FAILURE TO
MAKE PLAN PAYMENTS , MOTION TO
DISMISS CASE
11-4-14 [42]
41. 14-29348-D-13 JAMES SHAWVER OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
11-10-14 [29]

42. 14-27455-D-13 RYAN/LYNDA COHOON
PLG-2

MOTION TO AVOID LIEN OF CAVALRY
SPV I, LLC
11-18-14 [39]