

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 3, 2017 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.	12-28405-D-13	KEVIN/SUZANNE BREAKER	MOTION FOR RELIEF FROM
	NLG-1		AUTOMATIC STAY AND/OR MOTION
	SETERUS, INC. VS.		FOR RELIEF FROM CO-DEBTOR STAY
			11-30-16 [42]

2. 16-26608-D-13 SERGY/LEWIS ZACHARY
PGM-1
Final ruling:

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
11-17-16 [15]

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.

3. 10-53010-D-13 MICHAEL/MARGARET GABRIEL
MM-7

MOTION TO VALUE COLLATERAL OF
KEYBANK, N.A.
11-8-16 [107]

Tentative ruling:

This is the debtors' motion to correct an earlier court order, or alternatively, to value collateral of Keybank, N.A. The court is not prepared to consider the motion because the court is not persuaded service was adequate.

The debtors completed their chapter 13 plan and received their discharge and the case was closed on August 29, 2016. While the case was pending, the debtors filed a motion to value collateral of Keybank - a second position deed of trust against the debtors' then residence, and JPMorgan Chase Bank - a third deed of trust against the same property. No opposition was filed and the court issued a minute order (DN 81); however, the court inadvertently granted the motion only as to JPMorgan Chase Bank and did not mention Keybank. The present motion indicates it is intended to correct that oversight. The court will construe the motion as one made under Fed. R. Civ. P. 60(a), incorporated herein by Fed. R. Bankr. P. 9024, which permits the court to correct its own mistake arising from oversight or omission whenever one is found in a judgment or order.

The court's concern is that service of the present motion may not have been adequate. The moving parties served Keybank (1) at a street address with no attention line; (2) through its agent for service of process, as registered with the California Secretary of State; and (3) through the attorneys who filed Keybank's proof of claim in the case. The first method was insufficient because service on an FDIC-insured institution such as Keybank must be made by certified mail to the attention of an officer (Fed. R. Bankr. P. 7004(h) and 9014(b)), whereas here, there was no attention line and service was not made by certified mail. The second method was insufficient because service on an FDIC-insured institution must be made to the attention of an officer, not an agent for service of process, and because service was not made by certified mail. The third method was arguably sufficient while the case was open, as the attorneys, by filing the proof of claim, had appeared in the case for Keybank. See Fed. R. Bankr. P. 7004(h), subd. (1). Now that the case has been closed and reopened, however, the court is not persuaded such service was sufficient.

Therefore, the court intends to continue the hearing and require the moving parties to file a notice of continued hearing and serve it, together with the motion to value and the motion to reopen the case (as it contains considerably more information), on Keybank by certified mail to the attention of an officer. The court will hear the matter.

4. 16-24610-D-13 ARMANDO COVARRUBIAS
TOG-2

MOTION TO CONFIRM PLAN
11-14-16 [72]

5. 16-26711-D-13 JONEE MCGEE
MC-1

MOTION TO VALUE COLLATERAL OF
ZALES JEWELERS/COMENITY CAPITAL
BANK
11-29-16 [19]

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.

6. 16-26915-D-13 RICKY UGALE
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-5-16 [18]

7. 12-29222-D-13 KYLE/TRACY TROCHE
PGM-1

MOTION TO APPROVE LOAN
MODIFICATION
11-21-16 [75]

8. 16-26723-D-13 BUU TRUONG OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
12-5-16 [14]

9. 15-22228-D-13 SHELDON/ANGIE SMITH MOTION TO MODIFY PLAN
MJD-1 11-28-16 [64]

10. 15-23828-D-13 SHERYL HUDSON MOTION TO MODIFY PLAN
WW-8 11-29-16 [170]

Final ruling:

This case was dismissed on December 12, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

11. 16-26929-D-13 JENNIFER CANNON OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
12-5-16 [12]

12. 16-25832-D-13 TIMOTHY HOSKER AND MOTION TO CONFIRM PLAN
MJD-1 CRYSTAL HOSKER-STARR 11-2-16 [21]

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 referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

13. 16-26642-D-13 MARGARITA COVINGTON OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
11-21-16 [35]

Final ruling:

This is the trustee's objection to the debtor's claim of exemption in certain real property. On December 9, 2016, the debtor filed an amended Schedule C on which she removed the claim of exemption in that property. As a result of the filing of the amended Schedule C, the present objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

14. 16-22943-D-13 FALEMEI FINAU MOTION TO CONFIRM PLAN
ROC-2 11-9-16 [95]

Final ruling:

This case was dismissed on December 12, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

15. 16-25745-D-13 PHILLIP HAMMONS MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
NATIONSTAR MORTGAGE, LLC VS. 11-23-16 [42]

Final ruling:

This matter is resolved without oral argument. This is Nationstar Mortgage, LLC's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that the creditor's interest in the property is not adequately protected. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

16. 13-32850-D-13 FAY/A POLLINO
PGM-3

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS'
ATTORNEY
11-18-16 [55]

17. 16-25353-D-13 MURIAH KENDALL
SLE-3

MOTION TO VALUE COLLATERAL OF
FRANCHISE TAX BOARD
11-22-16 [42]

Tentative ruling:

This is the debtor's motion to value collateral of the Franchise Tax Board (the "Board"). No opposition has been filed; however, the moving papers do not demonstrate the moving party is entitled to the relief requested, as required by LBR 9014-1(d) (7).

The debtor states the value of the collateral securing the Board's lien is \$21,736, which is the value of the debtor's personal property assets. (There are no senior liens on any of those assets). However, the debtor does not mention her real property. On her Schedule A/B, the debtor listed the value of her real property as \$340,211 and scheduled a deed of trust senior in time to the Board's lien on which \$342,706 is owed. Thus, at first glance, it appears there is no equity in the real property to secure the Board's claim. The debtor arrived at her \$340,211 value as follows, according to her Schedule A:

FMV \$371,815
Costs of Sale \$340,211

In other words, she has apparently applied a multiple of 8.5% for costs of sale and deducted the result, \$31,604, from the fair market value of the property, \$371,815, to arrive at a value of \$340,211 after deducting hypothetical costs of sale.

The rule in the Ninth Circuit is that hypothetical costs of sale may not be deducted in valuing property for purposes of § 506(a). Taffi v. United States (In re Taffi), 96 F.3d 1190, 1192 (9th Cir. 1996).

When a Chapter 11 debtor or a Chapter 13 debtor intends to retain property subject to a lien, the purpose of a valuation under section 506(a) is not to determine the amount the creditor would receive if it hypothetically had to foreclose and sell the collateral. Neither the foreclosure value nor the costs of repossession are to be considered because no foreclosure is intended. Instead, when the proposed use of the property is continued retention by the debtor, the purpose of the valuation is to determine how much the creditor will receive for the

debtor's continued possession. Hypothetical sales costs are not to be considered because no sale is intended.

Id.; see also Mulvania v. United States, IRS (In re Mulvania), 214 B.R. 1, 10 (9th Cir. BAP 2007); In re Tapang, 2015 Bankr. LEXIS 1349, *37 (Bankr. N.D. Cal. 2015). Thus, the debtor is not permitted to deduct the hypothetical costs of sale from the fair market value of her real property for the purpose of valuing the Board's claim under § 506(a). When the amount due on the senior lien, \$342,706, is deducted from the fair market value of the property, \$371,815, there is \$29,109 in value remaining to secure the Board's claim. Adding the \$21,736 in personal property assets, there is more than enough value to secure the entire amount of the Board's claim, \$29,330 according to the debtor's Schedule B.

For the reasons stated, the court intends to deny the motion. The court will hear the matter.

18. 15-26560-D-13 JOHN/ROBIN IVY MOTION TO MODIFY PLAN
JCK-2 11-14-16 [33]

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 referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

19. 15-20362-D-13 MANUEL/IRENE ALVAREZ OBJECTION TO NOTICE OF
CJY-3 POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
10-12-16 [45]

Final ruling:

This is the debtors' objection to Bayview Loan Servicing's Notice of Postpetition Mortgage Fees, Expenses, and Charges filed March 18, 2016. On December 20, 2016, the debtors and Bayview filed a stipulation resolving the objection. The parties shall submit a proposed order approving the stipulation.

No appearance is necessary.

20. 15-20362-D-13 MANUEL/IRENE ALVAREZ OBJECTION TO NOTICE OF
CJY-3 POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
10-12-16 [49]

Final ruling:

This is an exact duplicate of the objection filed at DN 45, which is on the court's calendar as Item 19. Therefore, this matter is removed from calendar.

21. 11-44063-D-13 RUSSELL CAMPBELL
SDM-5

MOTION FOR FURTHER
ADMINISTRATION OF CASE, TO
SUBSTITUTE NORMAN DOUGLAS
CAMPBELL FOR DECEASED DEBTOR
RUSSELL LEE CAMPBELL AND FOR
WAIVER OF THE 1328 CERTIFICATE
REQUIREMENTS
11-15-16 [57]

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 for further administration of case, to substitute Norman Douglas Campbell for deceased debtor Russell Lee Campbell and for waiver of the 1328 Certificate requirements is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

22. 16-26469-D-13 LONEY/MARY TURPIN
TAG-2

MOTION TO EMPLOY JCL REALTY,
INC. AS REALTOR(S)
11-28-16 [37]

23. 11-31675-D-13 FRANCISCO/LOU LARA
SDM-3

MOTION FOR WAIVER OF THE
CERTIFICATION REQUIREMENTS FOR
ENTRY OF DISCHARGE IN A CHAPTER
13 CASE
12-5-16 [86]

24. 16-24977-D-13 JOSHUA/TONI HIATT
CJY-1

MOTION TO CONFIRM PLAN
10-18-16 [16]

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 referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

25. 16-24977-D-13 JOSHUA/TONI HIATT
CJY-2

CONTINUED MOTION TO VALUE
COLLATERAL OF MERCHANT CAPITAL
GROUP, LLC
11-11-16 [27]

Final ruling:

This is the debtors' motion to value collateral of Merchant Capital Group, LLC, dba Greenbox Capital ("Greenbox"). The hearing was continued to permit the debtors to submit supplemental evidence as to whether the secured claim of Greenbox may be valued in light of the "hanging paragraph" in § 1325(a) of the Bankruptcy Code. The debtors have submitted documentation sufficient, in the absence of opposition, to allow the court to conclude that Greenbox's lien is not a purchase money security interest, and thus, that the secured claim may be valued. The initial hearing was noticed pursuant to LBR 9014-1(f)(2) and the court's initial tentative ruling advised interested parties the court would entertain opposition, if any, at the hearing. No one appeared at the hearing in opposition to the motion and no opposition has been filed. Therefore, the court makes the following findings.

Greenbox's claim is secured by a junior lien on assets of the debtors and the amount owed on senior encumbrances exceeds the value of the assets. No opposition has been filed and no appearance has been made in opposition to the motion, 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 the secured claim of Merchant Capital Group, LLC, dba Greenbox Capital, at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

26. 14-28986-D-13 MARGARITA GUTIERREZ
ASW-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-29-16 [153]

Final ruling:

This matter is resolved without oral argument. This is Deutsche Bank National Trust Company's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that the creditor's interest in the property and the property is not adequately protected. Accordingly, the court finds there is cause for granting relief from stay as to the debtor and any co-debtor. The court will grant relief from stay as to the debtor and any co-debtor by minute order. There will be no further relief afforded. No appearance is necessary.

27.	16-25687-D-13	JAYAPRAKASH/ASHA VENGALIL	OBJECTION TO DEBTOR'S CLAIM OF
	RDG-1		EXEMPTIONS
			11-14-16 [25]

Tentative ruling:

This is the trustee's objection to the debtors' claim of exemptions. The objection was filed on November 14, 2016; it does not indicate whether it is an objection to the debtors' original Schedule C, filed with their petition on August 27, 2016, or their amended Schedule C, filed November 8, 2016. However, so far as the court can tell, the two schedules are identical; thus, the court will construe the objection as an objection to both. On November 15, 2016, the debtors filed another amended Schedule C on which, with one exception, they listed the specific amounts of the exemptions they are claiming in each item of property, rather than listing, as they previously had, 100% of the fair market value. If the November 15, 2016 amended Schedule C were valid, it would render the trustee's objection moot as to almost all of the assets claimed.

However, with that amended schedule, the debtors simply refiled the amendment cover sheet they had filed with their November 8, 2016 amendment; that is, they did not file a new amendment cover sheet, and therefore, have not verified the information in the November 15, 2016 schedule, as required by Fed. R. Bankr. P. 1008. As a result, the November 15, 2016 amended Schedule C is without effect. The court agrees with the trustee that the debtors' failure to list the dollar amounts of their various exemption claims on their original and November 8, 2016 Schedules C renders it impossible to assess whether the exemptions are properly claimed. Accordingly, the court intends to sustain the trustee's objection.

The court will hear the matter.

28.	13-21790-D-13	DOUGLAS TIMMONS AND	MOTION TO MODIFY PLAN
	CJY-2	SANDRA TYRRELL-TIMMONS	10-18-16 [58]

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 referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

29. 13-30490-D-13 CURTIS/ROSELAND ADAMS
CJY-1

OBJECTION TO NOTICE OF
POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
10-12-16 [44]

Tentative ruling:

This is the debtors' objection to the Notice of Postpetition Mortgage Fees, Expenses, and Charges, filed November 26, 2014 (the "Notice") by Nationstar Mortgage, LLC. The objection was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the court has the following procedural concern.

The debtors complain that the Notices assert unexplained amounts for attorney's fees, \$575 and \$275, and an unreasonable amount for "Bankruptcy/Proof of claim fees," \$275. The debtors request Nationstar be required to provide accountings or that the fees be reduced to \$0. The court's concern is that the applicable rule requires that motions for the determination of amounts due for postpetition fees, expenses, and charges must be filed within one year of the dates the notices were served (Fed. R. Bankr. P. 3002.1(e)), which in this case were all in 2014. As a result, it appears the objection was filed too late.

The court will hear the matter.

30. 16-26598-D-13 NORMA ESTRADA
RDG-1

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-21-16 [14]

Final ruling:

This is the trustee's objection to the debtor's claim of certain exemptions. On November 29, 2016, the debtor filed an amended Schedule C. As a result of the filing of the amended Schedule C, the present objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

31. 16-26798-D-13 SAMUEL ROSAS
EAT-1

OBJECTION TO CONFIRMATION OF
PLAN BY NATIONSTAR MORTGAGE,
LLC
12-7-16 [14]

32. 16-21519-D-13 BENNY/LUCY YERRO
CJY-2

MOTION TO APPROVE LOAN
MODIFICATION
12-12-16 [26]

33. 16-28037-D-13 FELIX AJAYI
RPK-1

MOTION TO EXTEND AUTOMATIC STAY
12-14-16 [9]

Tentative ruling:

This is the debtor's motion to extend the automatic stay. The court intends to deny the motion because the "attached list" referred to in the proof of service is not attached; thus, there is no evidence of service on any creditors. Alternatively, if an amended proof of service with the attached service list is filed before the hearing and service has been proper, the court will hear the matter.