

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

March 12, 2019 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.	18-28006-D-13	DENISE PINTO	OBJECTION TO CONFIRMATION OF
	RDG-1		PLAN BY RUSSELL D. GREER
			2-11-19 [14]

2.	18-26909-D-13	WILLIAM CRONIN	MOTION TO CONFIRM PLAN
	DCJ-1		1-21-19 [21]

Tentative ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The trustee and the United States Small Business Administration (the "SBA") have filed oppositions. For the following reasons, the motion will be denied.

The debtor and his wife have taken turns filing bankruptcy cases since December of 2015 - they have filed three each. The debtor's wife's first two cases were dismissed for, respectively, failure to file required documents on time and a \$7,580 delinquency under a proposed chapter 13 plan. The debtor's wife filed a motion to value the claim of the SBA in her second case. The SBA filed opposition and the motion was denied. In her third case, she filed two plans, in both of which she proposed to strip down three secured claims, including that of the SBA, but she never filed a motion to value any of the claims. She converted her case to chapter 7 after four and a half months and received a discharge.

The debtor's first case was filed January 6, 2016 and dismissed March 22, 2016 for failure to attend the section 341 meeting and failure to provide the required tax returns and payment advices. The debtor's second case was filed May 1, 2017 and dismissed October 26, 2017 for failure to obtain confirmation of a plan. In that case, the debtor filed three plans proposing to strip down three secured claims but never filed a motion to value.

This is the debtor's third case. This time around, the debtor proposes to strip down six secured claims but, as has been his and his wife's pattern, he has filed no motions to value. As a result, the court concludes the debtor has failed to comply with LBR 3015-1(i) and the plan has been proposed solely for the purpose of delay and not in good faith. The motion will be denied by minute order. The court will hear the matter.

3.	17-20211-D-13	ROBERT/CYNTHIA RANGEL	MOTION TO MODIFY PLAN
	JCK-8		1-25-19 [114]

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.

4.	18-20213-D-13	ASHLY RUIZ	MOTION TO INCUR DEBT
	RWF-3		2-8-19 [47]

5.	17-28215-D-13 PSB-2	KAREN/DANIEL VIDA	MOTION TO SELL 2-10-19 [62]
6.	16-21519-D-13 JAD-2	BENNY/LUCY YERRO	MOTION FOR HARDSHIP DISCHARGE 2-7-19 [50]
7.	18-27726-D-13 CJO-1	EDWARD COLOMA AND KATHERINE SANCHEZ	OBJECTION TO CONFIRMATION OF PLAN BY CENLAR FSB (ACCT. 5201) 1-30-19 [18]
8.	18-27726-D-13 CJO-1	EDWARD COLOMA AND KATHERINE SANCHEZ	OBJECTION TO CONFIRMATION OF PLAN BY CENLAR FSB (ACCT. 0545) 1-30-19 [21]

9. 18-27726-D-13 EDWARD COLOMA AND
RDG-1 KATHERINE SANCHEZ

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE RUSSELL D.
GREER
2-11-19 [25]

10. 11-48830-D-13 RENNE DEVINE
GS-1

MOTION TO AVOID LIEN OF DCFS
TRUST
2-9-19 [154]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

11. 11-48830-D-13 RENNE DEVINE
GS-2

MOTION TO AVOID LIEN OF
CITIBANK (SOUTH DAKOTA), N.A.
2-9-19 [159]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Citibank (South Dakota), N.A. (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 person authorized to receive service of process, whereas for an FDIC-insured institution, such as the Bank, service must be to the attention of an officer and only an officer. See Rule 7004(h).

This distinction is important. Whereas service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution may be to the attention of an officer, managing or general agent, or agent for service of process (Fed. R. Bankr. P. 7004(b)(3)), service on an FDIC-insured institution must be to the attention of an officer. If service on an FDIC-insured institution to the attention of a managing or general agent or agent for service of process were appropriate, the distinction between the two rules would be superfluous.

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

12.	11-48830-D-13	RENNE DEVINE	MOTION TO AVOID LIEN OF
	GS-3		PORTFOLIO RECOVERY ASSOCIATES, LLC
			2-9-19 [164]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

13.	18-26035-D-13	JAVIER/CAROLINA ZEGARRA	MOTION TO CONFIRM PLAN
	LLR-2		1-24-19 [34]

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.

14.	18-27837-D-13	THOMAS/ROSEMARY MALDONADO	OBJECTION TO CONFIRMATION OF
	RDG-1		PLAN BY RUSSELL D. GREER
			2-11-19 [17]

15.	18-27740-D-13	HENRIETTA DEBROUWER	OBJECTION TO CONFIRMATION OF
	RDG-1		PLAN BY RUSSELL D. GREER
			2-11-19 [15]

16. 17-25544-D-13 MANUEL/LIZA SABIO
JCK-5

MOTION TO MODIFY PLAN
1-28-19 [52]

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.

17. 18-27745-D-13 JUAN/MARIA SALAS
AP-1

OBJECTION TO CONFIRMATION OF
PLAN BY WILMINGTON TRUST, N.A.
1-17-19 [29]

Final ruling:

This is the objection of Wilmington Trust, National Association to confirmation of the debtors' proposed chapter 13 plan. On February 2, 2019, the debtors filed an amended chapter 13 plan (although no motion to confirm it, as required by LBR 3015-1(d)(1)). As a result of the filing of the amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

18. 18-26550-D-13 ANNA REYNOSO
PLG-2

MOTION TO CONFIRM PLAN
1-18-19 [28]

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. 18-26850-D-13 JACQUELINE MCCRAE
RDG-4

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
1-28-19 [53]

Tentative ruling:

This is the trustee's objection to the debtor's claim of exemptions filed January 23, 2019. The debtor has filed opposition. On February 5, 2019, after the trustee filed this objection, the debtor filed a further amended Schedule C. As a result of the filing of the further amended schedule, this objection is moot and will be overruled as such. The court will hear the matter.

20.	18-27753-D-13	DAVID SEGURA AND MARGARET	OBJECTION TO CONFIRMATION OF
	EAT-1	PATRICK	PLAN BY WELLS FARGO USA
			HOLDINGS, INC.
			1-31-19 [20]

Final ruling:

This is the objection of Wells Fargo USA Holdings, Inc. to the debtors' proposed chapter 13 plan. On February 14, 2019, the debtors filed an amended plan and a motion to confirm it. As a result of the filing of the amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

21.	18-27753-D-13	DAVID SEGURA AND MARGARET	OBJECTION TO CONFIRMATION OF
	RDG-2	PATRICK	PLAN BY RUSSELL D. GREER
			2-11-19 [24]

Final ruling:

This is the trustee's objection to the debtors' proposed chapter 13 plan. On February 14, 2019, the debtors filed an amended plan and a motion to confirm it. As a result of the filing of the amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

22.	18-24864-D-13	ERIC BARBARY AND MARIAN	CONTINUED MOTION TO APPROVE
	PGM-3	CORK-BARBARY	LOAN MODIFICATION
			12-16-18 [62]

23.	18-24864-D-13	ERIC BARBARY AND MARIAN	MOTION TO MODIFY PLAN
	PGM-4	CORK-BARBARY	2-1-19 [75]

24.	18-27772-D-13	DAVID MELLA AND MALU	OBJECTION TO CONFIRMATION OF
	RDG-1	CASTRO-MELLA	PLAN BY RUSSELL D GREER
			2-11-19 [15]

25.	16-26384-D-13	RAUL BOTELLO	MOTION TO INCUR DEBT
	JCK-3		2-14-19 [46]

26.	15-29786-D-13	JERROLD CLEMENS AND	MOTION TO AVOID LIEN OF
	LRR-4	SHAYLA TRAYLOR	DISCOVER BANK
			2-5-19 [71]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Discover Bank (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 (1) by first-class mail to the attention of Discover Products Inc.; and (2) by first-class mail at a post-office box address with no attention line. Both methods were insufficient because service on an FDIC-insured institution, such as the Bank, must be by certified mail and must be addressed to the attention of an officer. See Rule 7004(h).

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

27.	15-29786-D-13	JERROLD CLEMENS AND	MOTION TO AVOID LIEN OF
	LRR-5	SHAYLA TRAYLOR	CITIBANK (SOUTH DAKOTA), N.A.
			2-5-19 [76]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Citibank (South Dakota) N.A. (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 only through the attorneys who obtained its abstract of judgment, whereas there is no evidence the attorneys are authorized to receive service of process on behalf of the Bank in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).¹

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

1 The moving parties also served Citi Premier Pass Card (without an attention line), but they served all scheduled creditors and the debt owed to Citi Premier Pass Card, as listed on their Schedule E/F, appears to be an entirely different debt from the one secured by the judicial lien.

28. 14-27887-D-13 KENNY JENSEN MOTION TO MODIFY PLAN
DSH-7 1-30-19 [137]

29. 16-26787-D-13 JORGE/ROSARIO ESTRELLA MOTION TO MODIFY PLAN
MC-1 1-25-19 [27]

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.

30. 18-27891-D-13 LAWRENCE/JENNY BOLDON MOTION TO VALUE COLLATERAL OF
BSH-1 SYNCHRONY BANK
2-7-19 [16]

Final ruling:

This is the debtors' motion to value collateral of Synchrony 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 (1) by first-class mail to the attention of an officer, managing or general agent, or agent for service of process; and (2) by first-class mail to the attention of a corporate agent for service of process. Both methods were insufficient because an FDIC-insured institution, such as the Bank, must be by certified mail, not first-class mail. See Rule 7004(h). Both methods were insufficient for the additional reason that an FDIC-insured institution that has not appeared in the action through an attorney is required to be served to the attention of an officer, not a managing or general agent, and not through an agent for service of process. See id. In addition, although not technically required by

Rule 7004(h), it is commonly expected that when a party has filed a request for special notice in a case, motions pertaining directly to that party will be served at the address designated in the request. Here, the Bank filed a request for special notice six weeks before this motion was filed, but the debtors failed to serve the Bank at its designated address.

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

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| 31. | 18-27891-D-13 | LAWRENCE/JENNY BOLDON | OBJECTION TO CONFIRMATION OF |
| | RDG-1 | | PLAN BY RUSSELL D. GREER |
| | | | 2-11-19 [20] |
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| 32. | 18-24992-D-13 | LIDIA QUEZADA | OBJECTION TO CONFIRMATION OF |
| | RDG-1 | | PLAN BY RUSSELL D. GREER |
| | | | 2-11-19 [83] |
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| 33. | 17-26248-D-13 | MIKE/TRUC VO | CONTINUED MOTION TO MODIFY PLAN |
| | TOG-2 | | 1-18-19 [46] |

34. 18-25872-D-13 TAMMY WILLIAMS

CONTINUED MOTION TO CONFIRM
PLAN
1-14-19 [32]