

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

March 29, 2016 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.	15-91100-D-13	CHRIS MACDONALD	MOTION TO CONFIRM PLAN
	BSH-3		2-11-16 [44]

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.

2. 15-90302-D-13 CARLOS CARRILLO AND MOTION FOR RELIEF FROM
JHW-1 ANGELA CONTRERAS AUTOMATIC STAY
PERITUS PORTFOLIO SERVICES 2-19-16 [30]
VS.

Final ruling:

This matter is resolved without oral argument. This is Peritus Portfolio Services' 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. 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). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

3. 15-91102-D-13 THOMAS/PEGGY BETTENCOURT MOTION TO CONFIRM PLAN
DCJ-2 2-15-16 [32]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The moving parties filed their schedules a month after they filed their petition, pursuant to an order extending time. When they filed their schedules, they added creditors who had not been listed on their master address list and failed to amend the master address list. As a result, when they utilized the PACER matrix for service of this motion, the matrix omitted and the moving parties failed to serve Sheffield Financial, listed on their Schedule D, and several creditors listed on their Schedule E/F.

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

4. 15-90907-D-13 HAMISI WHITE MOTION TO COMPROMISE
FF-1 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JUDY CHANEY
2-10-16 [29]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to approve compromise of controversy. For the court to approve a compromise, it must find that the compromise is in the best interest of the debtor and the debtor's estate when considering the factors stated in In re Woodson, 839 F.2d 610 (9th Cir. 1988). These factors include the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors. The debtor's motion lacks any discussion or analysis of the above considerations that the court is to consider in assessing a compromise. Accordingly, the motion will be denied by minute order. No appearance is necessary.

5. 15-90907-D-13 HAMISI WHITE
FF-2

MOTION TO CONFIRM PLAN
2-10-16 [23]

6. 16-90011-D-13 WILLIAM WALKER
MRG-2

MOTION TO CONFIRM PLAN
2-16-16 [25]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The moving party filed his schedules a month after he filed his petition, pursuant to an order extending time. When he filed his schedules, he added creditors who had not been listed on his master address list and failed to amend the master address list. As a result, when the moving party utilized the PACER matrix for service of this motion, the matrix omitted and the moving party failed to serve the Franchise Tax Board or the Internal Revenue Service, both listed on his Schedule E/F, and failed to serve the three parties listed on his Schedule G. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes parties to executory contracts and unexpired leases with the debtor. Pursuant to Fed. R. Bankr. P. 1007(a)(1), the moving party was required to include those parties on his master address list, which he did not do, and pursuant to Fed. R. Bankr. P. 2002(b), was required to give those parties notice of this motion.

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

7. 11-94222-D-13 SHELLEY SHAHEN
DCJ-5

CONTINUED MOTION TO MODIFY PLAN
12-22-15 [95]

8. 12-92427-D-13 BENJAMIN/STEPHANIE ROSE MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
FORD MOTOR CREDIT COMPANY 2-23-16 [60]
VS.

Final ruling:

This matter is resolved without oral argument. This is Ford Motor Credit Company's ("Ford") motion for relief from automatic stay to pursue the insurance proceeds from their collateral. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that Ford's collateral was destroyed and they were a loss-payee on the insurance. Accordingly, the court finds there is cause for granting relief from stay. Relief from stay will be granted as to the debtors and any co-debtor to allow Ford to pursue available insurance proceeds. The court will also waive FRBP 4001(a)(3). There will be no further relief afforded. Moving party is to submit an appropriate order. No appearance is necessary.

9. 14-90529-D-13 GREGG/KIANDRA WALKER MOTION TO MODIFY PLAN
JAD-4 2-16-16 [67]

10. 12-92333-D-13 RAUL/MARIA REYES MOTION TO AVOID LIEN OF
TOG-7 CITIBANK (SOUTH DAKOTA), N.A.
Final ruling: 2-18-16 [86]

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 (1) the moving parties failed to served the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b); and (2) the motion is not accompanied by evidence establishing its factual allegations and demonstrating that the moving parties are entitled to the relief requested, as required by LBR 9014-1(d)(6).

The moving parties served the Bank (1) through the attorneys who obtained the Bank's abstract of judgment; and (2) at a street address with no attention line. The first method was insufficient because there is no evidence the attorneys who obtained the Bank's abstract of judgment are authorized to accept service on behalf of the Bank in bankruptcy contested matters (see In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004)), and the attorneys have not appeared for the Bank in this bankruptcy case, such that service on the attorneys would be appropriate under Fed. R. Bankr. P. 7004(h), subd. (1). The second method was insufficient because service on an FDIC-insured institution, such as the Bank, must be by certified mail to the attention of an officer of the institution (Fed. R. Bankr. P. 7004(h)), whereas here, there was no attention line and there is no indication that service was by certified mail.

Further, there is no evidence the moving parties are entitled to the relief requested. "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)." Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added) (internal quotation marks omitted). In this case, the debtors have not claimed as exempt any interest in the property as against which they seek to avoid the lien. (The motion states that the property has been exempted on an amended Schedule C; however, neither the original nor the amended Schedule C includes any claim of exemption in the property.) Thus, they debtors have not established that they are entitled to relief under § 522(f)(1)(A).

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

11. 12-92333-D-13 RAUL/MARIA REYES
TOG-8

MOTION TO AVOID LIEN OF CHASE
BANK, USA, N.A.
2-18-16 [93]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Chase Bank USA, N.A. (the "Bank"). The motion will be denied because (1) 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); and (2) the motion is not accompanied by evidence establishing its factual allegations and demonstrating that the moving parties are entitled to the relief requested, as required by LBR 9014-1(d)(6).

The moving parties served the Bank through the attorneys who obtained the Bank's abstract of judgment, whereas there is no evidence the attorneys are authorized to accept service on behalf of the Bank in bankruptcy contested matters (see In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004)), and the attorneys have not appeared for the Bank in this bankruptcy case, such that service on the attorneys would be appropriate under Fed. R. Bankr. P. 7004(h), subd. (1). The moving parties also served JPMorgan Chase Bank, N.A. (albeit not in accordance with Fed. R. Bankr. P. 7004(h)), whereas according to the FDIC, the Bank and JPMorgan Chase Bank, N.A. are two different entities.

Further, there is no evidence the moving parties are entitled to the relief requested. "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)." Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added) (internal quotation marks omitted). In this case, the debtors have not claimed as exempt any interest in the property as against which they seek to avoid the lien. (The motion states that the property has been exempted on an amended Schedule C; however, neither the original nor the amended Schedule C includes any claim of exemption in the property.) Thus, they debtors have not established that they are entitled to relief under § 522(f)(1)(A).

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

12. 16-90040-D-13 SOCORRO CRUZ
TOG-1

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
2-29-16 [13]

Final ruling:

The matter is resolved without oral argument. This is the debtor's 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 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 Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

13. 14-90241-D-13 CARL/MELISSA GREER
MSN-1

MOTION TO MODIFY PLAN
2-9-16 [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.

14. 15-91144-D-13 DAVID/JENNIFER FORD
DCJ-2

MOTION TO CONFIRM PLAN
2-15-16 [29]

15. 15-90855-D-13 PHILLIP/NECY LOPEZ
TOG-6

MOTION TO CONFIRM PLAN
2-11-16 [41]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

16. 15-91162-D-13 DAVID ANDERSON MOTION TO CONFIRM PLAN
DCJ-2 2-15-16 [29]

17. 15-91165-D-13 VICTOR/EVA PEDROZA MOTION TO CONFIRM PLAN
NFG-1 2-12-16 [29]

18. 16-90075-D-13 DANIEL JAMES AND PAULA MOTION TO VALUE COLLATERAL OF
EAT-1 FOX-JAMES WELLS FARGO BANK, N.A.
2-23-16 [10]

Final ruling:

The hearing on this motion is continued to May 10, 2016 at 10:00 a.m. No appearance is necessary on March 29, 2016.

19. 12-92992-D-13 ROBERT/SAMIA KHAMO MOTION TO MODIFY PLAN
MSN-1 2-22-16 [38]

Final ruling:

The relief requested in the motion is supported by the record, the trustee having withdrawn his opposition, and no other timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

20. 15-91094-D-13 JESSE/NICHOLL FRANCO
BSH-1

MOTION TO CONFIRM PLAN
2-11-16 [46]

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.

21. 15-91197-D-13 CATHERINE CORINA
MDE-1
TOYOTA LEASE TRUST VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-22-16 [61]

Final ruling:

This matter is resolved without oral argument. This is Toyota Lease Trust'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. 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). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

22. 15-91197-D-13 CATHERINE CORINA
PGM-1

MOTION TO CONFIRM PLAN
2-4-16 [45]

23. 16-90100-D-13 GREGORY BRAUN
JKB-1
ELIZABETH PARCELS VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY , MOTION FOR
ADEQUATE PROTECTION AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
3-9-16 [25]

**DEBTOR DISMISSED:
03/10/2016**

24.	11-93711-D-13 CJY-1	JEFFERY/YOKO MCWILLIAMS	MOTION TO APPROVE LOAN MODIFICATION 3-4-16 [36]
25.	14-90529-D-13 WFM-1	GREGG/KIANDRA WALKER	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 2-11-16 [57]
26.	15-91234-D-13 RDG-1	LYNLEE/SHERON JAMES	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 2-12-16 [17]
27.	14-91495-D-13 MLP-4	MINDY ADKINS	MOTION TO INCUR DEBT 3-15-16 [43]

28. 16-90218-D-13 GREGORY BRAUN
JKB-1
ELIZABETH CARLENE PARCELLS,
TRUSTEE VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION O.S.T.
3-18-16 [14]