

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 8, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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.

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.	14-22203-D-13	PAUL/ANNE NUNEZ	MOTION TO CONFIRM PLAN
	PLG-2		5-27-14 [33]

2.	11-49104-D-13	PONN SANN	MOTION TO MODIFY PLAN
	LMT-8		5-28-14 [91]

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.

3. 14-21904-D-13 HERIBERTO/YOLANDA LEMUS MOTION TO CONFIRM PLAN
DN-2 5-23-14 [31]

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.

4. 13-30608-D-13 VLADIMIR/VICTORIA LAT OBJECTION TO CLAIM OF LVNV
MSM-1 FUNDING, LLC, CLAIM NUMBER 9
5-15-14 [21]

5. 11-26015-D-13 ROGER/TISHA GALLARDO MOTION TO MODIFY PLAN
TBK-6 5-27-14 [115]

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.

6. 13-28318-D-13 WILLIS/VICKIE MARZOLF MOTION TO CONFIRM PLAN
PK-5 5-19-14 [224]

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. 13-20719-D-13 VICTOR/DAWN ALEJANDRE MOTION TO MODIFY PLAN
TBK-3 5-23-14 [63]

8. 10-49632-D-13 DEWEY CAVENDER MOTION TO MODIFY PLAN
DN-2 5-20-14 [26]

9. 14-25343-D-13 JORGE ARAMBULA MOTION TO VALUE COLLATERAL OF
TOG-1 OCWEN LOAN SERVICING, LLC
5-28-14 [10]

Final ruling:

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

10. 14-25352-D-13 RAMON BARRAGAN MOTION TO VALUE COLLATERAL OF
TOG-1 OCWEN LOAN SERVICING, LLC
6-5-14 [8]

Final ruling:

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

11. 13-35356-D-13 ESTHER/MAURILIO GOMEZ CONTINUED MOTION TO CONFIRM
JM-3 PLAN
4-14-14 [63]

12. 13-35356-D-13 ESTHER/MAURILIO GOMEZ MOTION TO VALUE COLLATERAL OF
JM-3 NATIONSTAR
5-13-14 [71]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Nationstar 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 Nationstar's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

13. 11-32158-D-13 CECILIO FIGUEROA-DIAZ AND MOTION TO VALUE COLLATERAL OF
JDP-1 PATRICIA FIGUEROA JP MORGAN CHASE BANK, N.A.
6-4-14 [46]

Final ruling:

The matter is resolved without oral argument. This is the debtors' 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 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 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.

14. 13-22958-D-13 ALEJANDRA AYON MOTION TO CONFIRM PLAN
TOG-6 5-16-14 [61]

15. 12-21570-D-13 DENIS XENOS
GMW-2

MOTION TO VALUE COLLATERAL OF
FARMERS AND MERCHANTS BANK
6-10-14 [45]

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.

16. 12-21570-D-13 DENIS XENOS
GMW-3

MOTION TO VALUE COLLATERAL OF
WYNDHAM
6-10-14 [50]

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.

17. 14-22773-D-13 ROLANDO/MICHELLE LOZANO
SDM-2

MOTION TO CONFIRM PLAN
5-28-14 [34]

Final ruling:

This case was dismissed on June 26, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

18. 11-44380-D-13 STEVEN/SHONA LOZANO
PK-2

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
6-9-14 [66]

Final ruling:

This is the debtors' motion to value collateral of Bank of America (the "Bank"). The motion will be denied for two reasons. First, the moving papers contain a docket control number that has been used previously in this case, contrary to LBR 9014-1(c)(3). Second, 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, as required by the rule, but to the attention of an "Officer, Managing or General Partner, or General Agent for 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.

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 agent for service of process were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous. The court would add that the words "General Partner" and "General Agent for Service of Process" are not appropriate under either rule. Finally, the moving parties failed to serve the attorneys who have requested special notice in this case on behalf of the Bank (see DN 16) and who filed the Bank's proof of claim on account of the second deed of trust that is the subject of this motion (Claim No. 2).

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

19.	14-24381-D-13	DAPHNE LANCASTER	OBJECTION TO CONFIRMATION OF
	JAB-1		PLAN BY PROVIDENT SAVINGS BANK
			6-9-14 [25]

Final ruling:

This case was dismissed on June 26, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

20.	13-29483-D-13	SHENIDA ARNICK	MOTION TO MODIFY PLAN
	JAD-2		5-20-14 [39]

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.	14-21084-D-13	PACO/CORINA GONZALES	MOTION TO APPROVE LOAN
	CJY-1		MODIFICATION
			6-6-14 [50]

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 a home loan modification is supported by the record. As such the court will grant the motion to approve a home loan modification. Moving party is to submit an appropriate order. No appearance is necessary.

22. 13-24789-D-13 RONALD/NICOLE TILLMAN MOTION TO MODIFY PLAN
MC-3 6-2-14 [73]

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.

23. 13-35390-D-13 PAUL/KIMBERLY CAVA MOTION TO CONFIRM PLAN
ALB-5 5-23-14 [87]

24. 11-25193-D-13 CLYDE/LORENE HOLLOWAY MOTION TO MODIFY PLAN
DN-2 5-20-14 [39]

25. 14-24994-D-13 LEAH CLEVELAND MOTION TO VALUE COLLATERAL OF E
CSL-1 TRADE BANK
6-5-14 [13]

Final ruling:

This is the debtor's motion to value collateral of E*Trade 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) at a post office box address, with no attention line; and (2) to the attention of an officer, managing or general agent, or person authorized to receive service of process, at the address of the registered agent for service of process of E*Trade Financial Corporation. The first method was insufficient because the rule requires that service on an FDIC-insured institution

be to the attention of an officer (see Fed. R. Bankr. P. 7004(h)), whereas here, there was no attention line. The second method was insufficient because the rule requires that service on an FDIC-insured institution be to the attention of an officer and only an officer. Fed. R. Bankr. P. 7004(h).

This distinction is important. Service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be to the attention of an officer, managing or general agent, or agent for service of process. Fed. R. Bankr. P. 7004(b)(3). If service on an FDIC-insured institution, such as the Bank, to the attention of an officer, managing or general agent, or person authorized to receive service of process were appropriate, the distinction in the manner of service, as between Rule 7004(b)(3) and Rule 7004(h), would be superfluous.

The second method was insufficient for the additional reason that service on an FDIC-insured institution must be to the attention of an officer, whereas it is unlikely an officer of the Bank is to be found at the location of the agent for service of process of E*Trade Financial Corporation, even assuming that is the same entity as the Bank. In addition, both methods were insufficient because the rule requires that an FDIC-insured institution be served by certified mail, not first-class mail. Fed. R. Bankr. P. 7004(h).

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

26.	13-32499-D-13	TERRI WRIGHT-MCDANIEL	MOTION TO MODIFY PLAN
	SJS-1		6-3-14 [66]

27.	14-23937-D-13	HECTOR/HERLINDA HERNANDEZ	OBJECTION TO CONFIRMATION OF
	RDG-2		PLAN BY RUSSELL D. GREER
			6-13-14 [28]

28. 14-24140-D-13 JESUS/AMY SALES
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-13-14 [18]

29. 14-26159-D-13 ELIZABETH MIDDLEKAUFF
MG-1

MOTION TO EXTEND AUTOMATIC STAY
6-17-14 [10]

Tentative ruling:

This is the debtor's motion to extend the automatic stay in this case pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The motion was brought on fewer than 28 days' notice; thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The court intends to deny the motion for two reasons. First, there is no proof of service on file. Second, the notice of hearing does not comply with the court's local rules. The moving party gave only 21 days' notice of the hearing; thus, the moving party was required to advise potential respondents that no written opposition was required. LBR 9014-1(f)(2)(C) and (d)(3). The notice of hearing does state that; however, it also states: "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 2:6-11), 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 2:15-16. 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. Finally, the notice of hearing states that the hearing will take place at 501 I Street - Suite 3-100.

As a result of these service and notice defects, the motion will be denied. In the alternative, the court will consider extending the automatic stay for a very short time, and requiring the moving party to file and serve a notice of continued hearing, which shall clearly state that no written opposition is required, and which shall not include the incorrect requirements contained in the original notice. The moving party will be required to serve the notice of continued hearing on the trustee, the United States Trustee, and all creditors, including the debtor's first mortgage lender at the address on its request for special notice, DN 14, and at all its addresses listed on the debtor's Schedule D, and the debtor's second mortgage lender at all the addresses listed on the debtor's Schedule D.

The court will hear the matter.

30. 11-31064-D-13 DAVID REID AND TRACEY CONTINUED MOTION TO SELL
RLB-5 BRADSHAW 6-9-14 [113]

31. 11-25767-D-13 ISAURO/EMMA FLORES MOTION TO REFINANCE
DN-3 6-20-14 [45]

32. 14-24381-D-13 DAPHNE LANCASTER OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
6-13-14 [31]

Final ruling:

This case was dismissed on June 26, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

33. 14-23584-D-13 VICTOR CASTRO-TORRES CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
5-30-14 [23]

34. 14-24495-D-13 MARGARITO/KATHERINE
RDG-1 ORTEGA

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-13-14 [19]

35. 14-26161-D-13 RACHELLE GODINEZ
DN-1

MOTION TO SET ASIDE DISMISSAL
OF CASE O.S.T.
7-1-14 [22]

CASE DISMISSED 6/30/14