

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

August 26, 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.

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|----|---------------|-------------------|-----------------------|
| 1. | 11-32704-D-13 | EUGENE/ANNA LUISA | MOTION TO MODIFY PLAN |
| | JCK-5 | FELISCO | 7-11-14 [69] |
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- | | | | |
|----|---------------|---------------------------|------------------------|
| 2. | 14-24904-D-13 | ABEL TAPIA AND ROSA ROSAS | MOTION TO CONFIRM PLAN |
| | | | 7-9-14 [35] |

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving papers do not include a docket control number, as required by LBR 9014-1(c); (2) the moving parties failed to serve the creditor requesting special notice at DN 16 at its designated address, as required by Fed. R. Bankr. P. 2002(g)(1); and (3) the moving parties failed to

serve the following creditors at the addresses listed on the debtors' schedules, as required by Fed. R. Bankr. P. 2002(g)(2) - Citi, HFC, and Pro Guard Pest Control Lodi.

As a result of the service and other procedural defects, the motion will be denied, and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

3.	09-42010-D-13	MICHAEL/CECILIA RILEY	MOTION FOR COMPENSATION FOR
	PGM-2		PETER G. MACALUSO, DEBTORS'
			ATTORNEY
			7-25-14 [102]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

4.	14-26018-D-13	ROBERTO/WILMA SANTOS	OBJECTION TO CONFIRMATION OF
	BHT-1		PLAN BY DEUTSCHE BANK NATIONAL
			TRUST COMPANY
			7-25-14 [22]

Final ruling:

This case was dismissed on July 25, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

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

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.

6. 14-21631-D-13 MICHAEL/NANNETTE FARIA MOTION TO CONFIRM PLAN
ARS-2 7-10-14 [41]
7. 14-25831-D-13 JAMES LEA OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
7-28-14 [12]
8. 14-26232-D-13 ADAM/SANDRA LEIGHTON MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY AND/OR MOTION
FORD MOTOR CREDIT COMPANY, FOR RELIEF FROM CO-DEBTOR STAY
LLC VS. 7-28-14 [22]
Final ruling:

This matter is resolved without oral argument. This is Ford Motor Credit Company, LLC'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.

9. 14-24840-D-13 SEAN/KELLY KAHLER MOTION TO CONFIRM PLAN
JAD-1 7-7-14 [19]
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.

10.	13-33345-D-13	JOSEPH HOLDENER	MOTION FOR RELIEF FROM
	MRG-1		AUTOMATIC STAY
	CAPITAL ONE AUTO FINANCE VS.		7-18-14 [46]

11.	14-22348-D-13	LISA PINA	MOTION TO CONFIRM PLAN
	ALF-3		7-10-14 [42]

12.	14-25149-D-13	SCOTT/SHEILA BOLLENGIER	MOTION TO CONFIRM PLAN
	JCK-1		7-10-14 [22]

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.	14-23451-D-13	ERNESTO/MARIA ORTEGA	MOTION TO CONFIRM PLAN
	TOG-4		7-9-14 [34]

14. 14-25852-D-13 AUTUMN TINNEY
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-28-14 [13]

15. 14-25359-D-13 LILLIAN GLEASON
RLG-2

MOTION TO VALUE COLLATERAL AND
MOTION TO AVOID LIEN OF HSBC
MORTGAGE SERVICES, INC.
7-25-14 [41]

Final ruling:

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

16. 14-26159-D-13 ELIZABETH MIDDLEKAUFF
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-26-14 [35]

17. 14-26159-D-13 ELIZABETH MIDDLEKAUFF
TJS-1

OBJECTION TO CONFIRMATION OF
PLAN BY PENNYMAC HOLDINGS, LLC
7-28-14 [38]

18. 10-44961-D-13 MARTHA POORNASIR
14-2153 RCB-1
POORNASIR V. BANK OF THE WEST,
N.A.

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
7-15-14 [9]

Final ruling:

This is the plaintiff's motion for entry of a default judgment against the defendant, Bank of the West. No timely opposition has been filed; however, the court is not prepared to consider the motion at this time because the defendant's default has not been entered.

Obtaining a default judgment is a two-step process. See Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). First, the clerk of the court enters the default of the party who has failed to plead or otherwise defend; the clerk or the court, depending on the nature of the plaintiff's claim, then enters a default judgment. Fed. R. Civ. P. 55(a) and (b), incorporated herein by Fed. R. Bankr. P. 7055. In this case, the plaintiff filed a request for entry of default on July 10, 2014, supported by a declaration of proper proof of service and a declaration regarding age and competency of the defendant along with a declaration re non-military status. On July 14, 2014, the clerk's office issued a memorandum indicating that (1) no Entry of Default and Order Re: Default Judgment Procedures, form EDC 3-727, had been submitted; and (2) the "Certificate of Summons" [sic] was not served to the agent for service of process. The memorandum was in error in one respect. The defendant in this adversary proceeding is an FDIC-insured institution; thus, pursuant to Fed. R. Bankr. P. 7004(h), service was required to be made by certified mail, to the attention of an officer, not to the attention of an agent for service of process. The record reveals that service was properly made on the defendant by certified mail to the attention of an officer. See certificate of service, DN 6; Request for Entry of Default by Plaintiff(s), DN 7, at 3:17-19.

The plaintiff is instructed to submit a proposed Entry of Default and Order Re: Default Judgment Procedures, form EDC 3-727. Once the defendant's default has been entered, the court will proceed to consider the motion for entry of a default judgment. The hearing on this motion will be continued by minute order to September 10, 2014, at 10:00 a.m. No appearance is necessary on August 26, 2014.

19. 14-26371-D-13 VICTOR/VICKI CHAO
JHW-1
FORD MOTOR CREDIT COMPANY,
LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-18-14 [14]

Final ruling:

This matter is resolved without oral argument. This is Ford Motor Credit Company, LLC'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.

20. 14-25673-D-13 STEVEN TUCKER
APN-1
OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
7-25-14 [33]
21. 14-25673-D-13 STEVEN TUCKER
KO-1
OBJECTION TO CONFIRMATION OF
PLAN BY PROVIDENT SAVINGS BANK
7-30-14 [40]
22. 14-25673-D-13 STEVEN TUCKER
RDG-1
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-28-14 [37]
23. 10-34977-D-13 MARIA FLORES
TOG-12
MOTION TO MODIFY PLAN
7-3-14 [161]

24. 13-26478-D-13 ALFONSO RODRIGUEZ
TOG-6

MOTION TO CONFIRM PLAN
7-15-14 [139]

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 Angelica Quiroz, listed on his Schedule H, who, given the broad definitions of "creditor" and "claim" in § 101(5) and (10) of the Bankruptcy Code, is a creditor of the debtor. Thus, the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). Further, pursuant to Fed. R. Bankr. P. 1007(a)(1), the debtor was required to list the name and address of Angelica Quiroz on his master address list, which he also failed to do.

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

25. 10-50479-D-13 ROBERT/NATALIE LEAL
DN-5

MOTION TO MODIFY PLAN
7-10-14 [81]

26. 14-25008-D-13 NHAT NGUYEN
BHT-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY U.S.
BANK NATIONAL ASSOCIATION
7-1-14 [43]

27. 14-25008-D-13 NHAT NGUYEN
JTN-1

CONTINUED MOTION TO VALUE
COLLATERAL OF OCWEN LOAN
SERVICING, LLC
6-4-14 [13]

Tentative ruling:

This is the debtor's motion to value the collateral securing the claim of U.S. Bank National Association (the "Bank") at \$275,000.1 The Bank holds the first and only deed of trust against the debtor's rental property commonly known as 9248 Survey Road, Elk Grove, California (the "Property"). The Property is a multi-tenant, light industrial property which produces income. On a Schedule D filed with the petition on May 12, 2014, the debtor scheduled the amount owed the Bank at

\$455,000; the Bank has filed a proof of claim for \$565,621. The debtor contends the value of the Property is \$275,000; thus, the effect of the granting of this motion would be to "strip down" the amount of the Bank's secured claim to \$275,000, leaving the balance of the claim as unsecured.

The debtor has submitted the declaration of Gary G. Young, a licensed real estate appraiser and broker, together with a copy of his appraisal, as evidence that the value of the Property is \$275,000. The Bank has submitted the declaration of Robin S. Weck, also a licensed real estate appraiser and broker, along with a copy of his appraisal, supporting the proposition that the value of the Property is \$360,000. Both appraisers have considerable experience in the field. Mr. Weck's resume, however, provides greater detail and more specifics as to his background and experience. Based on Mr. Weck's background and extensive experience, the court concludes that he is the more qualified of the two.

Further, Mr. Weck's appraisal is more specific than Mr. Young's. Mr. Weck goes into greater detail about the neighborhood where the Property is located, and in particular, its recent past, including since the economic recession began, and its likely future, including development plans. Mr. Weck has provided a detailed industrial market overview that is lacking in Mr. Young's report. Overall, Mr. Weck's sales comparables were closer to the subject Property than Mr. Young's, and Mr. Weck included a greater level of detail as to the particular adjustments he made to each comparable to arrive at appropriate adjusted values. Further, and significantly, four of Mr. Weck's comparable sales closed in 2014, whereas three of Mr. Young's comparables closed in 2012 and one in 2013.

Mr. Weck has located and utilized four lease comparables within two miles of the subject Property, whereas Mr. Young used two within that radius and one at a distance of 19 miles. However, based on the income approach, Mr. Weck and Mr. Young arrived at similar figures, \$270,000 and \$278,000, respectively. The greatest difference between their appraisals was in the sales comparison approach, with Mr. Weck arriving at a value of \$360,000 and Mr. Young, \$273,000. Mr. Young gave greater weight to the income approach, concluding that "the numerous (and sometimes very subjective) adjustments required for such items as location, age, condition, quality of construction and finished office ratios tend to reduce the reliability of this approach." Debtor's Ex. A, p. 46. Mr. Weck, on the other hand, gave greater weight to the sales comparison approach, due to the recency of his comparable sales and their proximity to the Property, and based on "the strength of the owner-user market as well as the weakness in lease rates at the present time." Bank's Ex. B, p. 53. Thus, it appears Mr. Weck's choice to rely more heavily on the sales comparison approach was based on factors particular to the Property and this appraisal, whereas Mr. Young's decision to give greater weight to the income approach was based on a factor - the subjectivity of needed adjustments in the sales comparison approach - that is more generally applicable. The court agrees with Mr. Weck that the comparable sales approach is the better indicator as to the current fair market value of the Property as opposed to a strict income approach.

Finally, Mr. Weck included in his declaration a critique of several aspects of Mr. Young's appraisal, including Mr. Young's assumption regarding the remaining economic life of the Property, his use of older sales when newer ones in close range were available, and apparent inaccuracies in the descriptions of several of his comparables. The debtor had the opportunity to present a reply to this critique, but chose not to do so.

For the reasons stated, the court gives greater weight to Mr. Weck's appraisal,

and will adopt his valuation, \$360,000, as the value of the Property, and hence, as the amount of the Bank's secured claim. The court will hear the matter.

1 In the motion, the debtor named the creditor as Ocwen Loan Servicing, LLC. The opposition was filed by U.S. Bank National Association, as Trustee for Lehman Brothers Small Balance Commercial Mortgage Pass-Through Certificates, Series 2006-3, as the holder of the claim.

28.	14-25008-D-13 NHAT NGUYEN RDG-2	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 6-27-14 [38]
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29.	12-32421-D-13 TIMOTHY/TAMERA ARAGON KAZ-1 BANK OF NEW YORK MELLON VS.	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 7-9-14 [56]
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Final ruling:

This matter is resolved without oral argument. This is The Bank of New York Mellon'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 there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay and for waiving FRBP 4001(a)(3). As a result, the court will grant relief from stay and will waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

30.	14-20141-D-13 JUAN/ELIZABETH MENDEZ LR-4	CONTINUED MOTION TO CONFIRM PLAN 5-22-14 [73]
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31. 14-27657-D-13 RONALD CEARLEY

MOTION TO POSTPONE PLAN
PAYMENTS
8-11-14 [13]