

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

September 6, 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.	16-23400-D-13 DIANE VALLES APN-1 SANTANDER CONSUMER USA INC. VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY 8-8-16 [32]
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Final ruling:

This matter is resolved without oral argument. This is Santander Consumer USA, Inc.'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.

2. 16-24100-D-13 JOSEPH HOLDENER OBJECTION TO CONFIRMATION OF
RDG-3 PLAN BY RUSSELL D. GREER
8-12-16 [28]

Final ruling:

This case was dismissed on August 24, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

3. 16-24001-D-13 ARMANDO/LINDA MARTINEZ OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
8-12-16 [29]

4. 15-26602-D-13 RICHARD EVANS AND BONNIE MOTION TO MODIFY PLAN
EJS-4 LEBERMAN
7-21-16 [57]

5. 16-24005-D-13 JENNIFER LAURETA OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
8-12-16 [22]

6. 16-23733-D-13 BELINDA SMITH OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
8-1-16 [25]

Final ruling:

This case was dismissed on August 24, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

7. 16-23436-D-13 CYNTHIA/PAUL MARSH MOTION TO CONFIRM PLAN
HWW-2 7-25-16 [24]

8. 16-20646-D-13 JEWELL WONG MOTION TO VALUE COLLATERAL OF
PGM-2 CITY TITLE LOAN, LLC
8-9-16 [66]

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.

9. 16-21047-D-13 FABIAN PELAYES OBJECTION TO CLAIM OF U.S.
PLL-4 BANK, N.A., CLAIM NUMBER 3-1
7-15-16 [67]

Final ruling:

This is the debtor's objection to the claim of U.S. Bank Home Mortgage, a division of U.S. Bank National Association (the "Claimant"). The Claimant has not filed opposition. However, that does not by itself entitle the debtor to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding

material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Thus, the court will consider the merits of the objection.

As a preliminary matter, the debtor failed to give notice of the objection in strict compliance with LBR 3007-1(c), which requires that an objection to a proof of claim be served on the claimant at the address on the proof of claim and the address listed in the debtor's schedules, if different. Here, the debtor served the Claimant at the address on the proof of claim, but not at the different address on the debtor's Schedule D.

Further, the debtor has failed to submit sufficient evidence to shift the burden to the Claimant to prove the validity of the claim. The claim is for a first position mortgage loan on the debtor's property. The total amount of the claim is \$290,190.02; the debtor objects only to the portion of the claim that asserts a pre-petition arrearage of \$405.81. The arrearage is described on an attachment to the proof of claim as a projected escrow shortage. The debtor objects on the grounds that (1) the debtor contacted the lender post-petition and was told all payments were current and "there is no outstanding balance due" (Debtor's Objection, DN 67, at 2:3), from which the debtor concludes "there are no arrears due" (id.); and (2) there is no breakdown included with the proof of claim that shows how the \$405.81 figure was arrived at.

As for the first argument, the statement is hearsay. To the extent it could be considered an admission against interest, it is unsupported by a declaration of the debtor or by any other evidence. In other words, it is nothing but an allegation. Further, that "there is no outstanding balance due" is not necessarily the same thing as there being no estimated escrow shortage, and the debtor has failed to provide any authority for the proposition that an estimated escrow shortage is not properly claimed as a pre-petition arrearage. Finally, there is an Annual Escrow Account Disclosure Statement attached to the proof of claim that is dated March 8, 2016 (two weeks post-petition) that shows a projected low balance in the escrow account of \$350.99 and a required low balance of \$756.80. The difference between those two figures is \$405.81. Thus, there is at least some support in the proof of claim itself of an estimated escrow shortage in that amount and the debtor has provided no evidence to the contrary.

"Upon objection, [a] proof of claim provides 'some evidence as to its validity and amount' and is 'strong enough to carry over a mere formal objection without more.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (citation omitted). "To defeat the claim, the objector must come forward with sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proof[] of claim [itself]. . . . If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence.'" Id. (citation omitted, emphasis added). As the debtor has produced no evidence to negate the sworn facts in the proof of claim so as to shift the burden to the Claimant to prove the validity of the claim, the objection will be overruled.

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

10. 16-20059-D-13 LEY NGAR
RWF-2

MOTION TO CONFIRM PLAN
7-20-16 [39]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve the creditor filing Claim No. 9 at the address on the proof of claim, as required by Fed. R. Bankr. P. 2002(g); and (2) the moving party failed to serve the party listed on the debtor's Schedule G - the other party to a business lease proposed to be assumed through the plan, at all. 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 a party to an unexpired lease with the debtor. Pursuant to Fed. R. Bankr. P. 1007(a)(1), the debtor was required to include that party on the master address list; the debtor included the lessor at an obviously incomplete address. Thus, that party has never been given notice of this case.

The debtor listed the lessor on his Schedule G as "MGR, LLC, San Jose, CA 00000," with no street address and an obviously incorrect zip code. This is the debtor's landlord on a business lease on which, according to the plan, the debtor is current. Thus, it appears the debtor has the landlord's complete address. On the mailing list for this motion, the debtor substituted Ranjit Hansra, in San Jose, in the space where MGR, LLC, San Jose, CA 00000 appeared in the mailing list for an earlier motion. Thus, it may be that Ranjit Hansra is the appropriate individual to be served for MGR, LLC. However, (1) there is no evidence whatsoever to suggest Ranjit Hansra is connected with MGR, LLC; and (2) the debtor's Schedule G lists the lessor as MGR, LLC, not Ranjit Hansra.

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

11. 16-22262-D-13 DIEGO HERRA
APN-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-8-16 [29]

Final ruling:

This case was dismissed on August 24, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

12. 16-23770-D-13 ERIK/SYLVIA PATTEN
DEF-1

MOTION TO CONFIRM PLAN
7-11-16 [21]

13. 16-22874-D-13 ANITA TOMBOC
MKM-3

MOTION TO CONFIRM PLAN
7-26-16 [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. 12-29375-D-13 LITTANAVONG KEOPADUBSY
JCK-1 AND VEEN DUANGSAWAT

MOTION TO MODIFY PLAN
7-21-16 [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 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.

15. 15-27776-D-13 INGEMAR/JENNIFER
CJY-1 TOLENADA

MOTION TO MODIFY PLAN
8-2-16 [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.

16. 12-30684-D-13 DANIEL RODRIGUEZ
LRR-4

MOTION TO MODIFY PLAN
7-12-16 [63]

17. 13-33386-D-13 WILMER/IRVINE JOHNSON MOTION TO MODIFY PLAN
JCK-6 7-21-16 [87]

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.

18. 14-24389-D-13 ROSYLIND JASPER MOTION TO MODIFY PLAN
SJS-2 7-20-16 [37]

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. 14-24389-D-13 ROSYLIND JASPER MOTION TO APPROVE LOAN
SJS-3 MODIFICATION
7-20-16 [43]

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 loan modification is supported by the record. As such the court will grant the motion by minute order. No appearance is necessary.

20. 16-22896-D-13 BERNARD/BARBARA VIGIL MOTION TO CONFIRM PLAN
SJS-1 7-20-16 [19]

21. 16-23999-D-13 MARCO ALONSO CARRASCO AND OBJECTION TO CONFIRMATION OF
RDG-1 MARIA CABRAL DE ALONSO PLAN BY RUSSELL D. GREER
8-12-16 [14]

22. 16-23803-D-13 JUSTIN HERRMANN AND OBJECTION TO CONFIRMATION OF
CHRISTINE KYDD-HERRMANN PLAN BY CENLAR
8-12-16 [19]

Final ruling:

This is the objection of Cenlar, as servicer for PrimeLending, to confirmation of the debtors' proposed chapter 13 plan. The objection will be overruled as moot because the trustee's objection to the same plan was sustained by order dated August 24, 2016. Cenlar's objection will be overruled as moot by minute order. No appearance is necessary.

23. 16-25353-D-13 MURIAH KENDALL MOTION TO EXTEND AUTOMATIC STAY
SLE-1 8-22-16 [11]