

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

September 16, 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.**

1.	14-90902-D-13	RICHARD AZIZ	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
	RDG-3		8-11-14 [22]
	Final ruling:		

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to the debtor's claim of exemptions. The trustee is to submit an appropriate order. No appearance is necessary.

2.	12-91710-D-13	JOSE/LETICIA CANO	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
	RDW-1		8-19-14 [48]
	CAM VII TRUST VS.		

3. 11-94412-D-13 EDUARDO/LINDA GONZALEZ MOTION TO MODIFY PLAN
JAD-1 8-8-14 [33]

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. 13-91812-D-13 DOUGLAS/KAREN METCALFE OBJECTION TO CLAIM OF BRANCH
SSA-6 BANKING & TRUST CO., CLAIM
NUMBER 18
7-31-14 [90]

Tentative ruling:

This is the debtors' objection to a claim in the amount of \$3,334.16 filed by Branch Banking & Trust Company (the "Bank"). The debtors object to the claim's assertion of secured status; they do not object to the claim as a general unsecured claim. For the following reason, the objection will be overruled without prejudice.

The debtors' objection is that although there is a copy of a judgment attached to the proof of claim, the claim "fails to provide any documentation evidencing that the claim is secured, for example, by the recordation of an abstract of judgment in the county where Debtors hold real property." Objection, filed July 31, 2014, at 1:24-26. However, although the absence of supporting documentation affects the presumption of validity under Fed. R. Bankr. P. 3001(f), it does not, by itself, subject the claim to disallowance. Thus, the Ninth Circuit Bankruptcy Appellate Panel has held:

When a creditor files a proof of claim, that claim is deemed allowed under Sections 501 and 502(a). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f) - it is not prima facie evidence of the validity and amount of the claim - but that by itself is not a basis to disallow the claim. Section 502(b) sets forth the exclusive grounds for disallowance of claims

Heath v. Am. Express Travel Related Servs. Co. (In re Heath), 331 B.R. 424, 426 (9th Cir. BAP 2005) (emphasis added). "Noncompliance with Rule 3001(c) is not one of the statutory grounds for disallowance." Id. at 435. Phrased another way, "[i]f the proof of claim is not entitled to prima facie validity then it may have lesser evidentiary weight or none at all, but unless there is a factual dispute that is irrelevant." Id. at 436. In this case, the debtors have offered no admissible evidence that the claim's secured status is unwarranted.

[E]vidence of any kind - prima facie or otherwise - is a concern only at a hearing to resolve factual disputes. See Fed. R. Evid. 401 (defining "relevant evidence" as that tending to make more or less probable "the

existence of any fact that is of consequence to the determination of the action"). The debtors' claim objections raised no factual dispute requiring a hearing. If [creditor's] proofs of claim are analogized to complaints - as is commonly done - then the debtors' objections are like motions to dismiss for failure to state a claim on which relief can be granted. The debtors do not deny any of the factual allegations of the proofs of claim; rather, their objections assert that an evidentiary hearing is unnecessary because of [creditor's] noncompliance with Rule 3001(c). Thus, the question is not the evidentiary impact of noncompliance with the rule, but whether noncompliance itself renders a claim subject to disallowance. As already noted, it does not.

Id. at 435-36 (citation omitted).

Because the debtors have submitted no admissible evidence to demonstrate that the claim is subject to disallowance as a secured claim for one of the reasons set forth in § 502(b), the objection will be overruled. Alternatively, the court will continue the hearing to allow the debtor to supplement the evidentiary record. The court will hear the matter.

5.	11-93117-D-13	TIMOTHY/MELISSA FAGNANI	MOTION TO APPROVE LOAN
	PPR-3		MODIFICATION
			8-14-14 [61]

6.	09-91620-D-13	OLEVIA JONES	MOTION TO VALUE COLLATERAL OF
	CJY-1		BOSCO CREDIT, LLC
			8-18-14 [91]

Final ruling:

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

7. 11-91822-D-13 LARRY/LESLIE JACKSON MOTION TO MODIFY PLAN
CJY-1 8-7-14 [54]

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.

8. 12-92427-D-13 BENJAMIN/STEPHANIE ROSE MOTION TO MODIFY PLAN
JAD-2 8-8-14 [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.

9. 09-93533-D-13 AMARJIT/KATHLEEN DHANOWA MOTION TO VALUE COLLATERAL OF
CJY-1 WELLS FARGO BANK, N.A.
7-31-14 [67]

Final ruling:

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

10. 09-93533-D-13 AMARJIT/KATHLEEN DHANOWA MOTION TO VALUE COLLATERAL OF
CJY-2 WELLS FARGO BANK, N.A.
7-31-14 [72]

Final ruling:

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

11. 14-91037-D-13 DEREK WARING AND CLAUDIA MOTION TO VALUE COLLATERAL OF
JAD-1 GONZALEZ-WARING GREEN TREE SERVICING LLC
7-24-14 [10]

Final ruling:

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

12. 14-90938-D-13 CLIFFORD PIKE AND LAURENE OBJECTION TO CONFIRMATION OF
MRG-1 FLOHR-PIKE PLAN BY USAA FEDERAL SAVINGS
BANK
7-29-14 [20]

13. 12-92342-D-13 CARMEN FOUNTAINE MOTION TO MODIFY PLAN
PLG-6 8-4-14 [114]

14. 14-91043-D-13 COLLEEN MENDOZA MOTION TO VALUE COLLATERAL OF
CJY-1 PNC BANK, N.A.
8-7-14 [9]

15. 14-90654-D-13 ANGEL/TABATHA GARCIA
LRR-2

MOTION TO CONFIRM PLAN
7-17-14 [37]

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 parties failed to serve the U.S. Dept. of Education at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b); and (2) the plan provides for the secured claim of Wells Fargo Home Mortgage at \$0, whereas the debtors' motion to value the collateral securing that claim, Item 16 on this calendar, will be denied; thus, the debtors have not complied with LBR 3015-1(j).

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

16. 14-90654-D-13 ANGEL/TABATHA GARCIA
LRR-3

MOTION TO VALUE COLLATERAL OF
WELLS FARGO HOME MORTGAGE INC.
7-17-14 [45]

Final ruling:

This is the debtors' motion to value collateral of Wells Fargo Home Mortgage, Inc. (the "creditor"), which is not an FDIC-insured institution. The motion will be denied because the moving parties failed to serve the creditor in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the creditor through Corporation Service Company dba CSC - Lawyers Inc. Service as its agent for service of process. However, the records of the California Secretary of State show the creditor as a "merged out" corporation. Under California law, a merger constitutes the surrender by the merged out corporation of its right to engage in intrastate business within this state, see Cal. Corp. Code § 2113(a), and service must be made by delivery to the Secretary of State. Id. at § 2114(b). (Under Fed. R. Bankr. P. 7004(b)(3), a moving party also has the option of service to the attention of an officer, managing or general agent of the surviving corporation, the name of which may be obtained from the Secretary of State. See California Secretary of State Debra Bowen, Business Search Field Descriptions and Status Definitions, <http://www.sos.ca.gov/business/be/cbs-field-status-definitions.htm>) (last visited Aug. 22, 2014).)

The moving parties also served also served the creditor by certified mail to the attention of its president. However, the rule requires that service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution be by first-class mail. See preamble to Fed. R. Bankr. P. 7004(b). Finally, the moving parties served the creditor at a post office box address with no attention line, whereas the rule requires service to the attention of an officer, managing or general agent, or agent for service of process.

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

17. 14-90657-D-13 KATRINA CHANDLER
SJS-1

MOTION TO CONFIRM PLAN
7-25-14 [26]

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.

18. 12-93060-D-13 LARUE/SANDRA KINERSON
JDP-4

MOTION TO MODIFY PLAN
8-7-14 [55]

19. 14-90461-D-13 JANIS WHITBY
SJS-2

MOTION TO CONFIRM PLAN
8-4-14 [35]

20. 09-94070-D-13 LAWRENCE/DEBRA MICHAEL
CJY-2

MOTION TO MODIFY PLAN
8-4-14 [83]

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. 14-90572-D-13 DOUGLAS/DEBORAH TOBIN
PGM-3

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA/REAL TIME
RESOLUTIONS
8-12-14 [51]

Final ruling:

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

22. 10-92582-D-13 AGNES DURGUN
JTN-4

MOTION TO MODIFY PLAN
7-17-14 [61]

Tentative ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The trustee has filed opposition, and the debtor has filed a reply. For the following reasons, the motion will be denied.

The trustee opposes the motion on the ground that the plan is not proposed in good faith, for two reasons. The trustee's first objection concerns the circumstances of the debtor's spouse, who apparently lives and possibly works in Turkey. The debtor has filed a declaration in reply, in which she provides additional information; she also indicates she has provided copies of her 2013 tax returns to the trustee, as requested by him. The court will hear from the trustee on this issue.

The second issue raised by the trustee is that the debtor appears to be contributing \$800 per month toward the expenses of a 23-year child. In reply, the debtor testifies she is providing these funds to her 23-year old son, who is a second-year full-time medical student at the University of California, Riverside. The debtor states: "Due to the rigorous demand of medical school, my son does not have a job and therefore needs the monthly stipend from me to pay for food, gas, clothing, books, school supplies and other living expenses." A. Durgun Decl., filed Sept. 4, 2014 ("Decl."), at 2:15-18.

The changes to the means test made by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 include a provision that unambiguously does not allow this type of deduction for an above-median income debtor such as the debtor here, and the case law interpreting that provision appears to be uniform on the issue. The relevant statute is § 707(b)(2)(A)(ii)(II) of the Code, incorporated into the analysis for above-median income debtors by § 1325(b)(3).¹ The subsection provides:

In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary expenses.

Sec. 707(b)(2)(A)(ii)(II). The case law supports disallowance under that subsection of expenses for an adult college student living away from home; it includes In re Cluff, 2012 Bankr. LEXIS 1123, at *13 (Bankr. D. Idaho 2012); In re Harris, 415 B.R. 756, 759-62 (Bankr. E.D. Cal. 2009); In re Walker, 383 B.R. 830, 838 (Bankr. N.D. Ga. 2008); In re Hess, 2007 Bankr. LEXIS 3553, at *8-9 (Bankr. N.D. Ohio 2007); In re Featherston, 2007 Bankr. LEXIS 4578, *40 (Bankr. D. Mont. 2007); In re Goins, 372 B.R. 824, 826-27 (Bankr. D.S.C. 2007); In re Hicks, 370 B.R. 919, 921-23 (Bankr. E.D. Mo. 2007). Simply put, "[w]hile a parent's desire to assist a child who is pursuing a college degree is laudable, a debtor is not free to do so at the expense of her unsecured creditors." Hess, 2007 Bankr. LEXIS 3553, at *8.

The court will hear the matter.

1 The debtor's Form 22C discloses that she is well above median-income, even for a family of 4, which she claimed as her household size, despite the fact that her spouse was at the time, as disclosed by her present testimony, living abroad. Deducting the spouse's income, as reported on Form 22C, and including only the debtor's, her annualized current monthly income was \$151,860, close to double the median-family income at that time for a household of 4, \$79,194.

23. 13-91184-D-13 GAIL ADAMS-BAILEY
NLG-1
SETERUS, INC. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-6-14 [44]

Final ruling:

In the debtor's confirmed plan this creditor is scheduled as Class 4 - to be paid outside the plan. Therefore, the motion is unnecessary as the plan explicitly provides: "Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of its loan or security documentation provided this case is pending under chapter 13." The court will deny the motion as unnecessary by minute order. No appearance is necessary.

24. 11-94291-D-13 MICHAEL/NANCI PANELLI
JDM-2

MOTION TO MODIFY PLAN
8-1-14 [68]

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.

25.	11-90693-D-13	GABRIEL RAMIREZ AND	MOTION TO MODIFY PLAN
	TOG-2	ERNESTINA ORNELAS	7-25-14 [39]

26.	14-90896-D-13	ANTONIO LEPE	MOTION TO VALUE COLLATERAL OF
	SJS-2		FARMERS AND MERCHANTS BANK
			8-19-14 [27]

Final ruling:

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

27.	11-93803-D-13	JOHN SALZMAN AND DANIELLE	MOTION TO INCUR DEBT
	JCK-4	NEVILLE-SALZMAN	8-29-14 [64]

28.	11-94116-D-13	KAREN SANGSTER	MOTION TO INCUR DEBT
	JDP-1		8-29-14 [46]

29.	14-90965-D-13 PD-1	SALLY HAMMOND	OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A. 8-27-14 [15]
30.	14-90967-D-13 RDG-1	DERYL/VIVIAN RATLIFF	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-27-14 [14]
31.	14-90968-D-13 RDG-2	CHRISTINE ROMERO	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-22-14 [14]
32.	14-90971-D-13 RDG-1	BRUCE/CASEY SNIDER	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-22-14 [22]

33.	14-90973-D-13 RDG-2	ALVARINO/SHIRLEY LEONARDO	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-22-14 [26]
34.	14-90977-D-13 RDG-1	SARAH KAMIENSKI	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-22-14 [17]
35.	10-90580-D-13 JDP-1	YOWAW/BIRTA YOUNAN	MOTION TO SELL 8-27-14 [52]
36.	14-90980-D-13 RDG-2	STANLEY SALBECK	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-26-14 [29]