

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Modesto, California

October 14, 2014 at 10:00 a.m.

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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.	11-92803-D-13	HELEN RICHARDS	MOTION TO VALUE COLLATERAL OF
	JDP-1		CITIZENS BANK, N.A.
			9-10-14 [33]

Final ruling:

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

2. 14-90009-D-13 ROBERT/JOOLET ALVAGI  
PPR-1  
U.S. BANK, N.A. VS.

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
7-31-14 [26]

3. 13-91812-D-13 DOUGLAS/KAREN METCALFE  
SSA-7

MOTION TO MODIFY PLAN  
8-26-14 [97]

**Tentative ruling:**

This is the debtors' motion to confirm a modified chapter 13 plan. On September 19, 2014, the trustee filed opposition, and on September 23, 2014, the debtors purported to withdraw the motion. However, at that point, the debtors no longer had the ability to withdraw the motion unilaterally. See Fed. R. Bankr. P. 9014(c) and Fed. R. Bankr. P. 7041, incorporating Fed. R. Civ. P. 41(a)(1) and (2). The court interprets the purported withdrawal of the motion as an indication that the debtors do not wish to contest the issue raised by the trustee, and thus, the court intends to deny the motion. The court notes also that the debtors served only the notice of hearing on creditors other than the single creditor that filed a request for special notice, and failed to serve the motion or the proposed modified plan itself, as required by LBR 3015-1(d)(1). This is another ground for denial of the motion.

The court will hear the matter.

4. 11-94116-D-13 KAREN SANGSTER  
JDP-1

CONTINUED MOTION TO INCUR DEBT  
8-29-14 [46]

5. 11-94116-D-13 KAREN SANGSTER  
JDP-2

MOTION TO MODIFY PLAN  
8-29-14 [51]

**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. 12-91422-D-13 DANIEL GARCIA MOTION TO APPROVE LOAN  
CJY-2 MODIFICATION  
9-18-14 [40]
7. 14-90722-D-13 MICHAEL/JANEEN OWEN MOTION TO CONFIRM PLAN  
BP-3 8-29-14 [41]
8. 14-91035-D-13 MEREDITH BROUSSARD MOTION TO TRANSFER 2003  
CJY-1 MITSUBISHI ECLIPSE  
9-12-14 [21]
9. 14-90939-D-13 DANIEL MITCHELL CONTINUED MOTION TO DISMISS  
MGW-1 CASE  
8-30-14 [27]

**Tentative ruling:**

This is the motion of creditors Schapiro-Thorn, Inc. and Suzie S. Thorn (the "moving parties") to dismiss this chapter 13 case with prejudice, for cause, or in the alternative, to dismiss the case with a 180-day bar to re-filing, pursuant to § 109(g) of the Bankruptcy Code. The motion was noticed under LBR 9014-1(f)(1), and no party-in-interest has filed opposition. However, the court is not prepared to grant the motion at this time because it appears the motion was not served on all creditors. The proof of service of the original notice of hearing, the motion, and supporting declarations and exhibits, DN 37, shows that the only parties served were the debtor, the debtor's attorney, the trustee, the United States Trustee, and the creditor requesting special notice in this case. No other creditors were served.

On the day the motion and original notice of hearing were filed, but a few minutes later, the moving parties filed a second notice of hearing, DN 38, which was not entitled "amended" notice, and is not otherwise distinguishable from the original, but which, at page 4, added the following: "Please contact Marlene Weinstein directly for more details, or for copies of the Motion and supporting documents which will be provided upon request." Immediately thereafter, the moving parties filed a proof of service, DN 39, of the "Notice of Hearing on Motion to Dismiss Case with Prejudice," presumably referring to the second notice of hearing filed that day. That proof of service evidences services on the same parties that were served originally; it also states "See Court Mailing Matrix Attached Hereto." There is no mailing matrix attached to the proof of service, but immediately after filing that proof of service, the moving parties filed a mailing matrix printed from PACER, DN 40. Because the matrix was filed separately, the record does not demonstrate with certainty that the parties served with the second notice of hearing included those listed on the matrix - that is, the other creditors in this case. Even if those creditors were served, however, the mailing matrix filed as DN 40 was two weeks old at the time it was used for service of the notice of hearing, and thus, it did not include the creditors who had in that interim two-week period filed Claim Nos. 4 through 9. Those creditors have not been served at all.

The court intends to continue the hearing to require the moving parties to file a notice of continued hearing and serve it on all creditors in this case. Service of the notice of continued hearing only will be sufficient if it contains the information in the original notice of hearing, which was sufficient to comply with LBR 9014-1(d)(4). The court will hear the matter.

10.	14-90650-D-13	JORGE ELIZALDE	MOTION TO CONFIRM PLAN
	TOG-5		9-2-14 [56]

11.	14-91156-D-13	TRISTAN BATES	MOTION TO VALUE COLLATERAL OF
	BSH-1		CAPITAL ONE AUTO FINANCE
			9-12-14 [15]

**Tentative ruling:**

This is the debtor's motion to value a 2009 Hyundai Sonata GLS at \$6,900. The vehicle is collateral for a debt owed by the debtor to Capital One Auto Finance ("Capital One"), which opposes the motion. For the reasons stated below, the court will deny the motion.

In support of the motion, the debtor filed a declaration in which the debtor states that the vehicle had approximately 75,000 miles on it at the time of filing, and is in good condition. The debtor concludes that at the time of filing, the vehicle "had a fair market value of \$6,900." Debtor's Decl., filed Sept. 12, 2014, at 2:1-2. By contrast, Capital One has submitted a Suggested Retail Breakdown from Kelley Blue Book showing a suggested retail value, after a deduction for mileage of 75,000, of \$9,864. Capital One concludes the replacement value of the vehicle should be determined to be \$9,864, which exceeds the amount due Capital One, \$9,340.96. On that basis, Capital One requests the motion be denied.

The standard the court is to use to value personal property acquired for personal, family, or household purposes is the property's "replacement value" as of the petition date, without deduction for costs of sale or marketing. § 506(a)(2).<sup>1</sup> "Replacement value," in turn, is defined as "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." Id. Here, the debtor states that the vehicle has a "fair market value" of \$6,900, whereas "fair market value" is not the appropriate standard under § 506(a)(2).

For that reason, the court concludes that the debtor has not met the debtor's burden of demonstrating the replacement value of the vehicle. Instead, giving greater weight to the Kelley Blue Book suggested retail value, the court concludes that the replacement value of the vehicle is \$9,864. As that amount exceeds the amount due Capital One, the motion will be denied.

The court will hear the matter.

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<sup>1</sup> The court assumes the debtor acquired the vehicle for personal, family, or household purposes, as the debtor's only income is from employment, and the debtor does not own or operate a business.

12. 11-91157-D-13 OLIVER/DENE TATMON  
JDP-1

MOTION TO MODIFY PLAN  
9-4-14 [59]

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. 14-90572-D-13 DOUGLAS/DEBORAH TOBIN CONTINUED MOTION TO CONFIRM  
PGM-2 PLAN  
7-8-14 [24]
14. 14-90572-D-13 DOUGLAS/DEBORAH TOBIN CONTINUED OBJECTION TO DEBTORS'  
RDG-2 CLAIM OF EXEMPTIONS  
7-18-14 [37]

15. 11-92978-D-13 LAURA DE LA HOYA MOTION TO VALUE COLLATERAL OF  
CJY-1 CITIBANK, N.A.  
8-25-14 [41]

**Final ruling:**

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

16. 14-90980-D-13 STANLEY SALBECK OBJECTION TO DEBTOR'S CLAIM OF  
RDG-1 EXEMPTIONS  
8-26-14 [32]

**Final ruling:**

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

17. 14-90781-D-13 STEVE/FRANCES MONTELONGO MOTION TO CONFIRM PLAN  
SFM-3 8-18-14 [60]

18. 14-91085-D-13 JUVENAL GONZALEZ MOTION TO AVOID LIEN OF  
JAD-1 PORTFOLIO RECOVERY ASSOCIATES,  
LLC  
8-25-14 [16]

**Final ruling:**

This is the debtor's motion to avoid a judicial lien held by Portfolio Recovery Associates, LLC ("Portfolio"). The motion will be denied because the moving party failed to serve Portfolio in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Portfolio (1) through the attorneys who obtained its abstract of judgment; (2) at a post office box to the attention of "Bankruptcy"; and (3) to the attention of "Agent for Service of Process: Corp. Service Company Which will do Business in Calif. As CSC - Lawyers Inc. Service" at an address in Norfolk, Virginia. The first method was insufficient because there is no evidence the attorneys who obtained Portfolio's abstract of judgment are authorized to accept service of process on Portfolio's behalf in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

The second method was insufficient because service on a corporation, partnership, or other unincorporated association 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)), not to the attention of "Bankruptcy." The third method was insufficient because where service is made to the attention of an agent for service of process, it must be to the attention of an agent actually authorized by appointment or by law to receive service of process (see Fed. R. Bankr. P. 7004(b)(3)), whereas the court takes judicial notice that the Virginia Secretary of State lists Portfolio's registered agent as Corporation Service Company at an address in Richmond, Virginia. The Virginia Secretary of State lists the address in Norfolk, Virginia at which the moving party served Portfolio to the attention of its agent for service as the address of Portfolio itself, not the address of its registered agent.

The court notes that even if the motion had been properly served, the court would grant the motion only in part, and avoid the lien only to the extent it secures \$767 of the debtor's obligation on the judgment. The lien would not be avoided as to the balance of the amount secured by the lien, \$1,484. This is because, except as to the amount of \$767, the evidence does not demonstrate that the lien impairs an exemption of the debtor, as required by § 522(f)(1)(A) of the

Bankruptcy Code for the avoidance of a judicial lien.

The lien is in the amount of \$2,251. In his supporting declaration, the debtor states that the value of his property was \$280,798 at the time the case was filed, and that there is a deed of trust against the property on which \$179,314 is owed. The debtor has claimed an exemption of \$100,000 in the property. Deducting the amount due on the deed of trust and the amount of the debtor's exemption from the value of the property leaves \$1,484 in equity in the property to support the judicial lien the debtor seeks to avoid. Viewed another way, applying the formula set forth in § 522(f)(2)(A), the total of the judicial lien, \$2,251, the amount owed on the deed of trust, \$179,314, and the amount of the debtor's exemption, \$100,000, is \$281,565. A judicial lien is considered to impair an exemption only to the extent that this total amount exceeds the value the debtor's interest in the property would have in the absence of any liens; in this case, that value is \$280,798. The total of the judicial lien, the mortgage lien, and the exemption exceeds the value of the property by only \$767; thus, the judicial lien impairs the exemption only to that extent. As to the balance of the amount secured by the judicial lien, \$1,484, the lien does not impair the exemption, and the lien, to the extent of \$1,484, would remain attached to the property.

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

19.	10-94793-D-13	JEANNETTE SABATHIA	MOTION TO MODIFY PLAN
	PLG-3		8-18-14 [60]

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.

20.	10-93098-D-13	JUDY GRIEPSMA	MOTION TO MODIFY PLAN
	BSH-5		8-26-14 [64]

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. 14-91312-D-13 MAURICE MOODY MOTION TO EXTEND AUTOMATIC STAY  
FF-1 9-29-14 [10]

22. 14-91069-D-13 CHRISTOPHER/ANGELA OBJECTION TO CONFIRMATION OF  
RDG-2 MAYFIELD PLAN BY RUSSELL D. GREER  
9-22-14 [15]

23. 14-91071-D-13 ROBERT LININGER OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
9-22-14 [19]

**Final ruling:**

**This case was dismissed on September 30, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.**

24. 14-91071-D-13 ROBERT LININGER OBJECTION TO CONFIRMATION OF  
APN-1 PLAN BY WELLS FARGO BANK, N.A.  
9-22-14 [22]

**Final ruling:**

**This case was dismissed on September 30, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.**

25. 14-91084-D-13 DANNY LOTT  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
9-22-14 [20]