

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

**October 30, 2018 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.	17-27504-D-13 RLG-12	LILLIAN GLEASON	MOTION TO CONFIRM PLAN 9-17-18 [120]
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2.	17-27504-D-13 RLG-13	LILLIAN GLEASON	AMENDED MOTION TO APPROVE LOAN MODIFICATION 9-17-18 [115]
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3. 18-20213-D-13 ASHLY RUIZ  
RWF-2

MOTION TO MODIFY PLAN  
9-14-18 [34]

4. 14-28526-D-13 DANNY/LUISA ACAIN  
JCK-5

MOTION TO MODIFY PLAN  
9-13-18 [72]

5. 13-26034-D-13 GARY/SABRINA SCHWARTZ  
JWS-1

MOTION TO DETERMINE FINAL CURE  
AND MORTGAGE PAYMENT RULE 3002.1  
9-19-18 [155]

**Tentative ruling:**

This is the debtors' motion pursuant to Fed. R. Bankr. P. 3002.1(h) for a determination that the debtors' mortgage default to Wells Fargo Bank has been cured and that the debtors have paid all required post-petition amounts. The Bank has filed a response. For the following reasons, the motion will be granted.

On August 10, 2018, the trustee filed a notice of final cure payment in which he stated he believed the debtors had paid all plan payments and had paid in full the amount required to cure the default due the Bank. The Bank filed a timely response in which it (1) agreed the debtors have paid in full the amount of the pre-petition default; but (2) claimed the debtors were due for the post-petition payment that came due on August 1, 2018, in the amount of \$1,435.29. According to the Bank's response to this motion, although the \$1,435.29 is on account of the payment due August 1, 2018, it actually derives from the alleged fact that the debtors' payment for June 2013 was never made, either by the debtors or by the trustee. Thus, that payment is a "missed payment that has caused the account to be one month behind" (Bank's Response, filed Oct. 16, 2018, at 3:24), for over five years. The Bank claims this fact "has come to light with the filing of the Trustee's Notice of Final Cure Mortgage Payment." Id. 3:25.

The court begins with the ledger attached to the Bank's response to the trustee's notice. According to the last page of the ledger, the debtors are due for the August 1, 2018 payment, in the amount of \$1,824.47, not \$1,435.29. (The court has not been able to locate the figure \$1,435.29 in the ledger or otherwise determine where it came from.) However, on the second to last line of the lines

listing the various payments due, payments made, payments applied, and so on, the "Date Funds Received," "Transaction Amount Received," and "Date Funds Applied" columns show the Bank received \$1,824.47 on August 15, 2018 and applied those funds the same day. The line immediately below that line shows the same amount being reversed; that is, in red font, as follows: "(\$1,824.47)," for the due date of August 1, 2018. This suggests the payment was reversed, albeit on August 1, 14 days before the date it was received, according to the line immediately above.

To say the ledger is confusing is an understatement. It includes several blocks of lines in which payments for as many as nine months in a row are listed in red font and brackets, suggesting the payments were reversed. The first page lists the payments due June, July, and August of 2013 in black font and then immediately reverses all three, in red font and brackets. It then lists the June and July payments again, in black font, then again in red font and brackets, and then again in black font. It seems safe to say that anyone not familiar with the intricacies of the program that generated the ledger can understand what it means. The Bank has not attempted to explain it, merely concluding that the June 1, 2013 payment was never made, which threw the whole payment schedule behind by one month, a fact that did not come to the Bank's attention for over five years. With nothing but the ledger as support, the conclusion is unreliable and the motion will be granted.

The motion will be granted for the additional independent reason that it is too late for the Bank to rely on the allegedly missed June 1, 2013 payment. The debtors filed this case on April 30, 2013 under chapter 7. The case was converted to chapter 13 on June 5, 2013 on the debtors' motion. They obtained confirmation of a chapter 13 plan in December 2013. In October 2014, the Bank filed opposition to the debtors' motion to confirm a modified plan on the sole ground that the plan failed to provide for the full amount of pre-petition arrears. The opposition said nothing about post-petition arrears. The trustee, however, raised the issue that the debtors had missed two post-petition payments, and the motion to confirm was denied. The debtors then filed another modified plan that provided for post-petition mortgage payment arrears totaling \$5,488.18. The plan was confirmed without opposition. At no time during this process did the Bank alert anyone that the debtors had missed the June 2013 payment.

Also in October 2014, the debtors objected to the pre-petition arrearage portion of the Bank's claim and the Bank filed opposition. The court ruled that the debtors had paid a significant portion of the payments due for March and April of 2013, whereas the Bank had included the full amounts of those months' payments as unpaid in the pre-petition arrearage portion of its claim. The court fixed the amount of the pre-petition arrears and the Bank later filed an amended proof of claim listing pre-petition arrears at a figure actually lower than the court had determined.

According to the trustee's final report and account, the trustee paid in full from the debtors' plan payments (1) the full amount of the Bank's pre-petition arrearage claim, as listed in its amended proof of claim, \$1,818.78; (2) the full amount of the Bank's post-petition mortgage payment arrears, \$5,488.18, as provided for in a confirmed modified plan the Bank did not object to; and (3) ongoing mortgage payments totaling \$105,527.43. If the allegedly missing June 1, 2013 payment is properly characterized as a pre-petition payment, the Bank had the opportunity and the duty to appeal the court's ruling on the debtors' objection to the pre-petition arrearage portion of its claim. If the payment is properly characterized as a post-petition payment and it was not included in the post-petition mortgage payment arrears provided for by the debtors' modified plan, the

Bank should have opposed the motion to confirm that plan. The Bank is bound by the order confirming that plan (§ 1327(a)), by the court's ruling on the debtors' objection to its claim, and by its own amended proof of claim.

For the reasons stated, the motion will be granted. The court will hear the matter.

6. 18-22741-D-13 MICHAEL/ORINA WHITE MOTION TO CONFIRM PLAN  
RKW-3 9-24-18 [64]

Tentative ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because there is no proof of service on file. The only proof of service filed at or near the time the motion was filed is a proof of service of amended Schedules G and J.

As a result of this service defect, the motion will be denied by minute order. Alternatively the court will continue the hearing to allow the moving party to file a proof of service. No appearance is necessary.

7. 18-24845-D-13 VICTOR HERRADA OBJECTION TO DEBTOR'S CLAIM OF  
RDG-2 EXEMPTIONS  
9-17-18 [35]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The objection was brought on the ground the debtor had failed to file a spousal waiver to permit the debtor to claim the exemptions provided by Cal. Code Civ. Proc. § 703.140(b). On October 9, 2018, the debtor filed a spousal waiver that appears to be signed by the debtor and his spouse. As a result of the filing of the spousal waiver, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

8. 17-28046-D-13 JAMES AZEVEDO MOTION TO AVOID LIEN OF CAPITAL  
FF-1 ONE BANK (USA), N.A.  
9-21-18 [100]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

9. 17-28046-D-13 JAMES AZEVEDO  
FF-2

MOTION TO AVOID LIEN OF CAPITAL  
ONE BANK (USA), N.A.  
9-21-18 [107]

**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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

10. 17-28046-D-13 JAMES AZEVEDO  
FF-4

MOTION TO CONFIRM PLAN  
9-21-18 [96]

11. 18-22146-D-13 ADRIAN GESMUNDO  
PGM-1

MOTION TO CONFIRM PLAN  
9-14-18 [39]

12. 18-20855-D-13 WALTER/SHIRLEY SAUNDERS  
TAG-2

MOTION TO CONFIRM PLAN  
9-12-18 [107]

13. 18-25857-D-13 MARVIN/MARY JONES  
JCK-2

MOTION TO VALUE COLLATERAL OF  
DITECH FINANCIAL, LLC  
9-18-18 [13]

**Final ruling:**

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

14. 18-24260-D-13 MARILOU PAAS  
RDG-2

MOTION TO CONFIRM PLAN  
9-17-18 [30]

**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 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. 18-21661-D-13 GERARDO LARA AND NORMA  
CLH-3 CAMARENA

CONTINUED MOTION TO CONFIRM  
PLAN  
8-21-18 [80]

16. 18-21661-D-13 GERARDO LARA AND NORMA  
HRH-1 CAMARENA  
BMO HARRIS BANK, N.A. VS.

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
8-9-18 [57]

17. 17-26662-D-13 KATHERINE SOUZA  
RKW-4

MOTION TO MODIFY PLAN  
9-13-18 [125]

18. 18-24963-D-13 CHENINE COTTRELL  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
10-1-18 [16]

19. 18-25069-D-13 GODOFREDO/GLORIA AYRAN  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
10-1-18 [17]

20. 18-24581-D-13 JOSE VALLE  
RDG-3

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
9-17-18 [24]

**Final ruling:**

**This case was dismissed on September 18, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.**

21. 16-26384-D-13 RAUL BOTELLO  
JCK-2

MOTION TO MODIFY PLAN  
9-13-18 [33]

22. 18-24984-D-13 MIKE/OLIVIA BANUELOS

OBJECTION TO CONFIRMATION OF  
PLAN BY MARIO GUTIERREZ  
9-26-18 [19]

**Final ruling:**

This is the objection of Mario Gutierrez to the debtors' proposed chapter 13 plan. On October 3, 2018, the debtors filed a different plan (although it is not entitled an "amended" plan and the title does not otherwise distinguish it from the original plan). As a result of the filing of the different plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

23. 18-24984-D-13 MIKE/OLIVIA BANUELOS  
CJO-1

OBJECTION TO CONFIRMATION OF  
PLAN BY ROUNDPOINT MORTGAGE  
SERVICING CORPORATION  
9-25-18 [16]

**Final ruling:**

This is the objection of RoundPoint Mortgage Servicing Corporation to the debtors' proposed chapter 13 plan. On October 3, 2018, the debtors filed a different plan (although it is not entitled an "amended" plan and the title does not otherwise distinguish it from the original plan). As a result of the filing of the different plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

24. 18-24984-D-13 MIKE/OLIVIA BANUELOS  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
10-1-18 [23]

**Final ruling:**

This is the trustee's objection to the debtors' proposed chapter 13 plan. On October 3, 2018, the debtors filed a different plan (although it is not entitled an "amended" plan and the title does not otherwise distinguish it from the original plan). As a result of the filing of the different plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.



25. 18-25696-D-13 GARY/LAURIE DIMARE  
JCK-1

MOTION TO AVOID LIEN OF CAPITAL  
ONE BANK, (USA), N.A.  
9-17-18 [8]

**Final ruling:**

This is the debtors' motion to avoid a judicial lien held by Capital One Bank (USA), N.A. (the "Bank"). The motion will be denied because 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), and where service was properly made, the moving parties served a different bank, not the one that holds the judicial lien the debtors are seeking to avoid.

The moving parties purported to serve the Bank (1) through the attorneys who obtained the Bank's abstract of judgment; (2) through the purported agent for service of process, Corporation Service Company, of a different bank; and (3) by certified mail to the attention of an officer of a different bank. The first method was insufficient because service on an FDIC-insured institution, such as the Bank, must be to the attention of an officer except where the institution has appeared in the action by its attorney (Fed. R. Bankr. P. 7004(h), subd. (1)), which is not the case here. The second method was insufficient because service on an FDIC-insured institution must be to the attention of an officer, whereas it is not likely an officer of the Bank is to be found at the office of a company that acts as agent for service of process for various corporations, such as Corporation Service Company. The third method was insufficient because, although service was made by certified mail to the attention of an officer, the bank served was Capital One, N.A., not Capital One Bank (USA), N.A.<sup>1</sup>

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

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1 According to the FDIC, there are two different active entities having "Capital One" in their names - Capital One, National Association, headquartered in McLean, Virginia, and Capital One Bank (USA), National Association, headquartered in Glen Allen, Virginia. The FDIC indicates that both banks use the name Capital One Bank as an additional name - the difference is determined by the address. Thus, Capital One, N.A. and the bank using Capital One Bank as an additional name for Capital One, N.A., are both listed at the McLean address, whereas Capital One Bank (USA), N.A. and the bank using Capital One Bank as an additional name for Capital One Bank (USA), N.A., are both listed at the Glen Allen address. Here, the moving parties purported to serve the Bank at the McLean address, which is not the address of the bank whose judicial lien they are seeking to avoid.

26. 13-29799-D-13 ARTEMIO/NILDA OLIVAR  
PGM-1

OBJECTION TO NOTICE OF  
POSTPETITION MORTGAGE FEES,  
EXPENSES AND CHARGES  
9-11-18 [74]

**Final ruling:**

This objection has been resolved by stipulated order entered on October 22, 2018. As such, the matter is removed from calendar. No appearance is necessary.

27.	18-26205-D-13 PGM-1	ANGEL/ANGELIQUE ESQUEDA	MOTION TO EXTEND AUTOMATIC STAY 10-7-18 [12]
28.	18-25857-D-13 JCK-1	MARVIN/MARY JONES	CONTINUED MOTION TO EXTEND AUTOMATIC STAY 9-17-18 [8]
29.	18-24799-D-13 RDG-1	IGNACIO/TEODOMIRA MORENO	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-17-18 [18]