

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

December 15, 2015 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.	13-90509-D-13	CARL MARLER	MOTION TO MODIFY PLAN
	PGM-1		11-4-15 [61]

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.

2. 11-92910-D-13 DOUGLAS/STACIA ISAAC MOTION TO VALUE COLLATERAL OF
CJY-2 WELLS FARGO BANK, N.A.
11-17-15 [59]
3. 11-90115-D-13 ISRAEL/REBECA VARGAS MOTION TO MODIFY PLAN
TOG-10 10-23-15 [190]
4. 15-90515-D-13 EDWARD RAMIREZ AND LEAH MOTION TO CONFIRM PLAN
CUEVAS RAMIREZ 11-3-15 [45]

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 several of the creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); (2) the moving parties failed to serve the parties requesting special notice in this case at their designated addresses, as required by the same rule; (3) the moving parties failed to serve Citibank Sd., Na, listed on their Schedule F, at its address on the schedule, as required by the same rule; and (4) as the trustee points out, the moving papers include different docket control numbers and, in the case of the motion, no docket control number, contrary to LBR 9014-1(c).

For the reasons stated, the motion will be denied and the court need not reach the other issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

5. 15-90916-D-13 BRUCE/MARY BRUMMEL
AAM-1

MOTION TO VALUE COLLATERAL OF
OCWEN LOAN SERVICING, LLC
AND/OR MOTION TO AVOID LIEN OF
OCWEN LOAN SERVICING, LLC
10-25-15 [16]

Final ruling:

This is the debtors' motion to value collateral of Ocwen Loan Servicing, LLC ("Ocwen"). The motion will be denied because the moving parties failed to serve Ocwen in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Ocwen (1) by certified mail at a street address with no attention line; and (2) by certified mail to its agent for service of process. The first 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, whereas here there was no attention line. Both methods were insufficient because service on an LLC such as Ocwen that is not an FDIC-insured institution must be by first-class mail, not certified mail.

This distinction is important. Whereas service on an FDIC-insured institution must be by certified mail (Fed. R. Bankr. P. 7004(h)), service on an LLC that is not an FDIC-insured institution must be by first-class mail (preamble to Fed. R. Bankr. P. 7004(b)). If service by certified mail on an LLC that is not an FDIC-insured institution were appropriate, the distinction between the two rules would be superfluous.

In addition, the proof of service bears a signature date of October 25, 2015 and was filed the same day, whereas it states that service was made on October 26, 2015, the next day. Thus, the proof of service cannot be accurate.

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

6. 14-90722-D-13 MICHAEL/JANEEN OWEN
BP-5

MOTION TO MODIFY PLAN
10-28-15 [67]

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.

7. 15-90622-D-13 DEBORAH HANSEN
CAH-1

MOTION TO CONFIRM PLAN
10-26-15 [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 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. 15-90028-D-13 RAFAEL REYNA
MLP-4

OBJECTION TO CLAIM OF
CLEARSPRING LOAN SERVICES,
INC., CLAIM NUMBER 5
10-26-15 [88]

Final ruling:

This is the debtor's objection to the claim of Clearspring Loan Services, Inc. (the "Claimant"), Claim No. 5 on the court's claims register. Apparently in response to the objection, the Claimant filed an amended proof of claim, on November 5, 2015. On December 3, 2015, the debtor filed a supplemental objection directed to the amended proof of claim. As a result of the filing of the amended proof of claim, the original objection is moot. The debtor served the supplemental objection on December 3, 2015, which provided only 12 days' notice to the Claimant, less than the minimum of 30 days' required by LBR 3007-1(b). Thus, the original objection will be overruled as moot and the supplemental objection will be overruled for insufficient notice. Both will be overruled by minute order. No appearance is necessary.

9. 11-92931-D-13 DONALD WOOD
JCK-2

MOTION TO MODIFY PLAN
10-30-15 [50]

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. 10-93732-D-13 CHAD/STEPHANIE LOVE
CJY-1

MOTION TO VALUE COLLATERAL OF
OCWEN LOAN SERVICING, LLC
11-17-15 [53]

11. 10-94832-D-13 ANDRES/VIRGINIA DIAZ
CJY-3

MOTION TO REFINANCE
11-18-15 [71]

12. 15-90248-D-13 JOHN DELAO AND
MSN-1 ALEXANDRINA BARRERA

CONTINUED MOTION TO CONFIRM
PLAN
8-18-15 [33]

13. 15-90248-D-13 JOHN DELAO AND
MSN-2 ALEXANDRINA BARRERA

OBJECTION TO CLAIM OF THE BANK
OF NEW YORK MELLON, CLAIM
NUMBER 8
10-27-15 [45]

Tentative ruling:

This is the debtors' objection to the arrearage portion of the claim of the Bank of New York Mellon, Claim No. 8 on the court's claims register. Select Portfolio Servicing, Inc. ("SPS"), as servicer, has filed opposition. For the following reasons, the objection will be sustained in part and overruled in part.

The arrearage portion of the claim is made up of the following:

March 2015 payment	\$1,359.27
Late charges	184.68
Escrow shortage	838.52
Proof of Service fee	30.00

As to the first of these, the debtors claim they were current on their mortgage payments when this case was filed, on March 13, 2015. As for the late charges, the proof of claim indicates they are for the months of May 2014, September 2014, November 2014, and February 2015. The debtors make no specific challenge to this portion of the claim, although they request that the entire arrearage claim be disallowed. As to the escrow shortage, the debtors contend an escrow analysis made March 19, 2015 (just after this case was filed) shows no shortage. Finally, the debtors do not specifically challenge the \$30 proof of service fee.

SPS begins with the argument that the debtors have failed to provide sufficient evidence to overcome the prima facie validity of the claim. In fact, the debtors provided no admissible evidence in support of the objection, only unauthenticated exhibits. However, the court finds it appropriate to take judicial notice of the debtors' declarations filed May 18, 2015 (DN 23) and August 18, 2015 (DN 35) and the exhibits authenticated by the first declaration (DN 24). These documents were filed in support of (1) the debtors' response to the objection of Bank of America (the prior servicer) to the debtors' original plan, and (2) the debtors' motion to confirm an amended plan, respectively. In addition, SPS has made no objection to the debtors' exhibits filed in support of this objection to claim and the court has no reason to believe they are not authentic. Thus, the court will consider those as well.

First, the debtors have submitted copies of checks dated January 1 and January 31, 2015 and bank statements showing those checks cleared their account January 6 and February 2, respectively. The debtors claim those were the checks for their January and February payments. They have also submitted a copy of a Bank of America deposit receipt dated February 27, 2015 for the same amount they had been paying, \$1,274.90. If that was in fact the payment for March 2015, as the debtors claim, then the debtors were almost current (at least as to their monthly payments) as of the petition date. They were not completely current because their payment due for the month of March was \$1,359.27 whereas they paid only \$1,274.90.

SPS claims, however, that the payment made February 27 was applied to the February 2015 payment and that the debtors did not make another payment until April 1, 2015. If that is correct, the debtors were in arrears for the month of March when their petition was filed (on March 13) and the \$1,359.27 portion of the arrearage claim is accurate. SPS has submitted no evidence to support its contention that the payment made February 27 was the payment due for February. However, the debtors submitted a copy of their statement from Bank of America for the March payment (debtors' exhibits filed May 18, DN 24) that shows the February 27 payment, \$1,274.90, as having been posted that day; it also shows a new payment, in the amount of \$1,543.94, as being due March 1. The statement supports the conclusion that the payment the debtors made on February 27 was for the February payment not the March payment. Thus, on the petition date, March 13, the debtors owed \$1,359.27 for the March payment, which was due March 1. That portion of the debtors' objection will be overruled.

The debtors make no specific challenge to the late charges or the \$30 fee (which SPS refers to as a "Proof of Service" fee and which appears on their April 2015 mortgage statement as an "Expedited Payoff Service Fee." As to those two portions of the arrearage claim, the objection will be overruled.

Finally, as for the escrow shortage, SPS claims it was computed in accordance with the Real Estate Settlement Procedures Act and Regulation X. SPS, through its counsel, then draws the conclusion that a shortage of \$838.52, which appears on the escrow analysis as a "Misc. posting," is in fact the "total pre-petition escrow shortage" and is properly included in the claim. This conclusion is insufficient to overcome the debtors' challenge. The court has carefully examined the escrow analysis and finds (1) no listing of a shortage, and (2) no combination of figures that equals \$838.52. That figure is listed as a miscellaneous posting, which is insufficient to demonstrate that it is really a shortage. Further, the analysis shows the "lowest projected balance" in the escrow account during the next year as \$659.77 and the "total reserve requirement (16.6% of the base amount)" as \$659.77, with a resulting "additional amounts required" of \$0.00. Thus, the "monthly reserve

requirement" is \$0.00.

Finally, the analysis shows the "base amount needed for taxes and/or insurance" as \$331.21 per month, with a "shortage payment" of \$0.00 and a "reserve requirement" of \$0.00, for a "total monthly escrow payment" of \$331.21. That amount is \$104.53 lower than the amount the debtors had been paying. In short, the escrow analysis, which is the only evidence SPS has submitted, is insufficient to demonstrate there was a shortage in the debtors' escrow account as of the petition date.

To conclude, the objection will be sustained in part and the court will disallow \$838.52 of the arrearage claim. Except to that extent, the objection will be overruled. The court will hear the matter.

14.	15-90650-D-13	RAYMOND/CLEETA AFANADOR	MOTION TO AVOID LIEN OF SPRING
	MSN-2		CREEK GOLF AND COUNTRY CLUB
			10-27-15 [25]

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 debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

15.	14-90154-D-13	RENEE VENTURA	MOTION FOR RELIEF FROM
	PRABHA WATI VS.		AUTOMATIC STAY
			11-17-15 [51]

Final ruling:

This motion has been resolved by a stipulation and order entered November 19, 2015. Matter removed from calendar. No appearance is necessary.

16.	12-91355-D-13	PABLO/ESPERANZA CASTRO	MOTION TO VALUE COLLATERAL OF
	CJY-4		LAURIE HALVERSON
			11-17-15 [40]

17. 15-90858-D-13 TROY/JESSICA HUGHART
MSN-1

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA INC.
11-2-15 [18]

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.

18. 13-90359-D-13 KENNETH/MARGARET KENNEDY
JCK-1

MOTION TO SELL
11-12-15 [27]

19. 13-91271-D-13 GEORGE ESPOSITO
CJY-2

MOTION TO MODIFY PLAN
10-28-15 [45]

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. 10-92977-D-13 JOHN/JEANETTE KRICK
CJY-2

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
11-17-15 [51]

21. 15-90378-D-13 WALTER/CECILIA FERREIRA MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
FORD MOTOR CREDIT COMPANY 11-9-15 [72]
VS.

Final ruling:

This matter is resolved without oral argument. This is Ford Motor Credit Company's motion for relief from automatic stay. The vehicle that is the subject of this motion was in a collision and was declared a total loss. The moving party seeks to apply available insurance proceeds. 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 to waive FRBP 4001(1)(a)(3). The court will grant relief from stay and waive FRBP 4001(1)(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

22. 15-90515-D-13 EDWARD RAMIREZ AND LEAH MOTION TO VALUE COLLATERAL OF
BSH-3 CUEVAS RAMIREZ WELLS FARGO BANK, N.A.
12-1-15 [52]

23. 15-90515-D-13 EDWARD RAMIREZ AND LEAH MOTION TO VALUE COLLATERAL OF
BSH-4 CUEVAS RAMIREZ MID-CENTURY INSURANCE EXCHANGE
12-1-15 [57]

Tentative ruling:

This is the debtors' motion to value collateral of Mid-Century Insurance Exchange ("Mid-Century"), whose claim is secured by a judgment lien against the debtors' residence. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court would ordinarily consider opposition, if any, at the hearing. However, the court has a preliminary concern.

The moving parties served Mid-Century as follows: "ATTN Officer, Managing or General Agent or Agent for Service of Process, c/o Christensen & Christensen." The court cannot determine whether Christensen & Christensen is a law firm, an insurance agency, or something else. In any event, there is no indication Christensen & Christensen is authorized to receive service of process on behalf of Mid-Century 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)) and no reason to believe an officer or managing or general agent of Mid-Century is likely to be found at the address of Christensen & Christensen. Thus, it appears the moving parties failed to serve Mid-Century in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). Accordingly, the court intends to deny the motion.

The court will hear the matter.

24.	15-90946-D-13 RDG-1	DAVID/CAROL TRUAX	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 11-23-15 [24]
25.	15-90555-D-13 BSH-2	SUSAN ALLEN	AMENDED MOTION TO CONVERT CHAPTER 13 TO CHAPTER 11 CASE 11-24-15 [67]
26.	10-94068-D-13 JDP-1	PATRICIA O'REILLY	MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS, INC. 11-20-15 [63]
27.	10-93076-D-13 CJY-1	ARTHUR/SHERYL HOFFMAN	MOTION TO VALUE COLLATERAL OF VALLEY FIRST CREDIT UNION 12-1-15 [66]

28.	15-91141-D-13 SLH-1	GEOFFREY WIK AND JENNIFER SPENCER-WIK	MOTION TO EXTEND AUTOMATIC STAY O.S.T. 12-4-15 [8]
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