

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 21, 2020 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 Lindsey Peratis, the Courtroom Deputy, at (916) 930-4473 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. [19-26202](#)-B-13 ILIANA LOMBARDO MOTION TO CONFIRM PLAN
[TOG-2](#) 12-17-19 [[23](#)]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for two reasons. First, the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(9). The moving party failed to serve the creditor listed on her Schedule H as co-debtor on the debtor's property mortgage. 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 co-debtors on debts of the debtor.

Second, because the debtor's master address list does not include this creditor, the debtor has failed to comply with Fed. R. Bankr. P. 1007(a)(1), which requires a debtor to include on his or her master address list the names and addresses of all parties included or to be included on his or her schedules, including Schedule H. As a result, the court's creditor list, as reflected on the

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court's website for this case and on the PACER matrix, does not include those creditors. Thus, this creditor has not received and will not receive notices served by the Bankruptcy Noticing Center or by creditors in the case.

It is the moving party's responsibility to serve the motion on all creditors, which, presumably, she will do when she files another motion. However, she also has a responsibility to be sure her master address list includes "each entity included . . . on Schedules D, E/F, G, and H . . ." Fed. R. Bankr. P. 1007(a)(1). Thus, the plan cannot be confirmed because the debtor has failed to comply with her duty to file a complete list of creditors, as required by § 521(a)(1)(A), as implemented by Fed. R. Bankr. P. 1007(a)(1), and thus, has not complied with § 1325(a)(1).

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

2. [18-25003](#)-B-13 DEVISTEEN CONLEY MOTION TO INCUR DEBT
[BLG](#)-4 12-23-19 [[58](#)]

3. [19-27105](#)-C-13 STEPHANIE MUZZI OBJECTION TO CONFIRMATION OF
[AP](#)-1 PLAN BY WELLS FARGO BANK, N.A.
12-2-19 [[17](#)]

Final ruling:

This is Wells Fargo Bank, N.A.'s objection to confirmation of the debtor's proposed chapter 13 plan. On December 17, 2019, the debtor filed an amended plan and a motion to confirm it. As a result of the filing of the amended plan, the present objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

4. [19-27105](#)-C-13 STEPHANIE MUZZI MOTION TO CONFIRM PLAN
[PGM](#)-1 12-17-19 [[34](#)]

5. [18-23806](#)-B-13 LISA THOMPSON
[MJ-1](#)

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-5-19 [[105](#)]

WELLS FARGO BANK, N.A. VS.

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that the debtor's plan is in default and the debtor has failed to make post-confirmation payments. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

6. [19-27016](#)-C-13 KATHLEEN MARSLEK
[RDG-1](#)

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-23-19 [[12](#)]

7. [19-26922](#)-B-13 MARIAMA SANE
[RDG-1](#)

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-23-19 [[28](#)]

Final Ruling:

Objection withdrawn by moving party. Matter removed from calendar.

8. [19-25524](#)-B-13 CHRISTINA MORONES
[PGM-3](#)

MOTION TO VALUE COLLATERAL OF
INTERNAL REVENUE SERVICE
12-18-19 [[49](#)]

Tentative ruling:

The debtor filed this motion seeking to value the secured claim of the Internal Revenue Service ("IRS"). Debtor's calculations, included only in his Declaration, conclude there is \$17,970.18 in equity to secured the IRS' claim. Despite concluding there is equity, Debtor's counsel concludes "here is insufficient equity to secure the lien in its entirety."

The court's review of the record resulted in \$48,866.22 of equity. The difference in calculation comes from Debtor's counsel (1) using a "Fair Market Value less 25K in fees" valuation for the Bridgeport property, (2) listing an unsecured lien, and (3) using Debtor's schedule D rather than the creditor's proof of claim to show amount owed on the 1st DOT.

Debtor also filed a motion to value the secured claim of the Franchise Tax Board. Debtor asserts there too there is \$17,970.18 in equity. This leaves it for the court to investigate which lien came first and is secured. In that motion, too, debtor's counsel asks for the claim to be treated as unsecured.

Because of the foregoing deficiencies, the court will deny the motion without prejudice.

9. [19-25524](#)-B-13 CHRISTINA MORONES MOTION TO VALUE COLLATERAL OF
[PGM-4](#) FRANCHISE TAX BOARD
12-18-19 [[55](#)]

Tentative ruling:

The debtor filed this motion seeking to value the secured claim of the Franchise Tax Board ("FTB"). Debtor's calculations, included only in his Declaration, conclude there is \$17,970.18 in equity to secured the IRS' claim. Despite concluding there is equity, debtor's counsel concludes the claim should be treated as unsecured.

The court's review of the record resulted in \$48,866.22 of equity. The difference in calculation comes from Debtor's counsel (1) using a "Fair Market Value less 25K in fees" valuation for the Bridgeport property, (2) listing an unsecured lien, and (3) using Debtor's schedule D rather than the creditor's proof of claim to show amount owed on the 1st DOT.

Debtor also filed a motion to value the secured claim of the Internal Revenue Service. Debtor asserts there too there is \$17,970.18 in equity. This leaves it for the court to investigate which lien came first and is secured. In that motion, too, debtor's counsel asks for the claim to be treated as unsecured.

Because of the foregoing deficiencies, the court will deny the motion without prejudice.

10. [19-26926](#)-C-13 ALEJANDRO/JOANN REYES OBJECTION TO CONFIRMATION OF
[RDG-1](#) PLAN BY RUSSELL D. GREER
12-23-19 [[34](#)]

Final ruling:

This is the trustee's objection to confirmation of the debtors' proposed chapter 13 plan. On January 14, 2020, the debtors filed an amended plan and a motion to confirm it. As a result of the filing of the amended plan, the present objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

11. [19-22132](#)-B-13 TAGE CRADDOCK AND SHANNON MOTION FOR RELIEF FROM
[ALG-1](#) CAREY AUTOMATIC STAY
12-11-19 [[50](#)]

SUN WEST MORTGAGE COMPANY,
INC. VS.

Final ruling:

This matter is resolved without oral argument. This is Sun West Mortgage Company, Inc.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that the creditor's interest is not adequately protected. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

12. [19-26733](#)-B-13 MARIO MENDEZ AND DEANNA OBJECTION TO CONFIRMATION OF
[RDG-1](#) DELOSSANTOS-MENDEZ PLAN BY RUSSELL D. GREER
12-24-19 [[13](#)]

13. [18-20142](#)-B-13 BLAIR/GRACIA BERGMANN MOTION TO MODIFY PLAN
[MSN-2](#) 12-4-19 [[48](#)]

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. [18-25843](#)-B-13 RICHARD DIMES-WILLIAMS MOTION TO MODIFY PLAN
[WIL](#)-2 AND CRYSTAL 12-9-19 [[31](#)]

15. [18-26043](#)-B-13 ROBERT EVANS MOTION TO CONFIRM PLAN
[BSH](#)-4 11-18-19 [[85](#)]

16. [19-20248](#)-B-13 VALERIE MARIN MOTION TO CONFIRM PLAN
[HWW](#)-5 12-5-19 [[77](#)]

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.

17. [19-27151](#)-C-13 MAUREEN CLINE OBJECTION TO CONFIRMATION OF
[RDG](#)-1 PLAN BY RUSSELL D. GREER
12-23-19 [[23](#)]

18. [19-26952](#)-C-13 ASHLEY BOLTON OBJECTION TO CONFIRMATION OF
[RDG](#)-1 PLAN BY RUSSELL D. GREER
12-23-19 [[20](#)]
19. [17-21954](#)-B-13 ROBIN/MARIA RUSHING MOTION TO CONFIRM PLAN
[SLE](#)-2 12-9-19 [[68](#)]
20. [19-27455](#)-C-13 BORIS TIBULSCHI AND MOTION FOR RELIEF FROM
[JHW](#)-1 GALINA TIBULSCAIA AUTOMATIC STAY
12-12-19 [[26](#)]
FORD MOTOR CREDIT COMPANY
LLC VS.

Final ruling:

This matter is resolved without oral argument. This is Ford Motor Credit Company, LLC'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 debtors are 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.

21. [17-25256](#)-B-13 DANIEL HERNANDEZ AND LUZ MOTION TO INCUR DEBT
[GSJ](#)-5 DE LA HOYA-HERNANDEZ 1-7-20 [[87](#)]
22. [19-26958](#)-B-13 JOSE/DEBORAH INIGUEZ OBJECTION TO CONFIRMATION OF
[APN](#)-1 PLAN BY WELLS FARGO BANK, N.A.
12-24-19 [[34](#)]
23. [19-26958](#)-B-13 JOSE/DEBORAH INIGUEZ OBJECTION TO CONFIRMATION OF
[RDG](#)-1 PLAN BY RUSSELL D. GREER
12-23-19 [[31](#)]
24. [19-26960](#)-B-13 FRANCISCO FRANCO OBJECTION TO CONFIRMATION OF
[EAT](#)-1 PLAN BY NATIONSTAR MORTGAGE LLC
12-17-19 [[16](#)]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

25. [19-26364](#)-C-13 STEVEN/MARIA PETERSON MOTION TO CONFIRM PLAN
[PLC](#)-1 11-21-19 [[22](#)]

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.

26. [19-27064](#)-C-13 BENJAMIN GUYTON AND OBJECTION TO CONFIRMATION OF
[RDG](#)-2 SHIRLEY LEGARDA-GUYTON PLAN BY RUSSELL D. GREER
12-23-19 [[30](#)]

27. [19-26166](#)-B-13 BRYANT DEMPSEY OBJECTION TO DEBTOR'S CLAIM OF
[RDG](#)-2 EXEMPTIONS
12-9-19 [[22](#)]

Final ruling:

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

28. [19-21573](#)-B-13 SHANNON FOLEY CONTINUED MOTION TO MODIFY PLAN
[SMJ](#)-1 11-1-19 [[40](#)]

Final ruling:

On January 10, 2020, the court issued an order confirming the modified plan. Therefore, the matter is removed from calendar. No appearance necessary.

29. [17-23577](#)-B-13 LEAH ELEMEN
[GB-1](#)

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
12-16-19 [[57](#)]

U.S. BANK TRUST NATIONAL
ASSOCIATION VS.

30. [19-26998](#)-C-13 CHRISTOPHER ALLEY
[RDG-1](#)

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-23-19 [[15](#)]