

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

February 2, 2016 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.	15-91009-D-13 BF-1	KIT JORY	OBJECTION TO CONFIRMATION OF PLAN BY CALIBER HOME LOANS, INC. 12-22-15 [34]
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Final ruling:

This case was dismissed on January 20, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

2.	15-91009-D-13 RDG-3	KIT JORY	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 12-18-15 [31]
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Final ruling:

This case was dismissed on January 20, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

3. 15-90414-D-13 JESSE SELLERS MOTION TO CONFIRM PLAN
CJY-2 12-14-15 [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.

4. 15-90515-D-13 EDWARD RAMIREZ AND LEAH MOTION TO CONFIRM PLAN
BSH-5 CUEVAS RAMIREZ 12-17-15 [72]

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.

5. 11-94222-D-13 SHELLEY SHAHEN MOTION TO MODIFY PLAN
DCJ-5 12-22-15 [95]

6. 15-91027-D-13 TERRI TAYLOR OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
12-18-15 [24]

Final ruling:

This case was dismissed on January 21, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

7. 14-91539-D-13 HEATHER POLETE MOTION TO MODIFY PLAN
MSN-1 12-23-15 [28]

Final ruling:

The relief requested in the motion is supported by the record, the trustee has 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 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. 12-92040-D-13 JOHN/ROBYN FITZGERALD MOTION TO MODIFY PLAN
CJY-2 12-18-15 [43]

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. 15-90556-D-13 JENNIFER HOFFMAN MOTION TO CONFIRM PLAN
EWG-2 12-15-15 [48]

10. 14-91185-D-13 DAVID/ESPERANZA HARRIS OBJECTION TO CLAIM OF FRANCHISE
DCJ-1 TAX BOARD, CLAIM NUMBER 3
12-22-15 [30]

Tentative ruling:

The debtors object to the priority portion of the claim of the Franchise Tax Board ("FTB"), Claim No. 3 on the court's claims register, in the amount of \$11,246.45, on the ground it is not entitled to priority under § 507(a)(8) of the Bankruptcy Code or any other code section. The objection was noticed pursuant to LBR 3007-1(b)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The debtors' evidence is insufficient to overcome the prima facie validity of the proof of claim afforded it by Fed. R. Bankr. P. 3001(f). The objection is based on the sole ground that the claim is for personal income taxes for a taxable year for which a return was last due, including extensions, more than three years before the date of filing of this case.¹ Debtor David Harris testifies the claim is for personal income taxes for 2006, for which the return was due April 15, 2007. He adds, "for purposes of the Objection, we can assume that my wife and I obtained an extension of time to file the return to October 15, 2007, which is the last possible date for an extension." Because the petition was not filed until August 24, 2014, the return was last due more than six years (and therefore more than three years) before the petition was filed. Thus, the debtors conclude that the claim is not entitled to priority.

In fact, the evidence of which the court may take judicial notice supports the conclusion that the three-year period of § 507(a)(8)(A)(i) has not run. What the debtors have omitted from their calculation is the effect of the unnumbered paragraph at the end of § 507(a)(8) which provides that the time periods in subsection (a)(8) are suspended during any period in which the governmental unit to which the taxes are owed is prohibited from collecting because of a stay in effect in a prior bankruptcy case, plus 90 days. The court takes judicial notice that the debtors were in a chapter 13 case in this court, Case No. 09-90744, between March 23, 2009 and May 7, 2013, when the case was dismissed. As discussed below, by operation of various subsections of § 362, the FTB was prohibited from collecting against the debtors, property of the debtors, or property of the estate during the entire time between the petition date and the dismissal date, plus 90 days.

First, pursuant to § 362(c)(1), the stay of an act against property of the estate continues until the property is no longer property of the estate. The debtors' three confirmed plans in their prior case all provided that property of the estate would not revert in the debtors at confirmation; thus, the automatic stay prohibited the FTB from collecting from property of the estate from the commencement of the case until the case was dismissed. Second, pursuant to § 362(c)(2), the stay of any other act (other than an act against property of the estate) continues until the earliest of the time the case closed, the time it is dismissed, and the time a discharge is granted or denied. The debtors did not receive a discharge in their prior case and the case was dismissed before it was closed. Thus, the stay of acts against the debtors and property of the debtors continued from the time the case was commenced until the date it was dismissed.

In light of the stay of collection efforts while the prior case was pending, the calculation of the three-year period for priority of this tax debt is as follows:

Oct. 15, 2007 - March 23, 2009

Time after which the return was last due runs for one year and 159 days until the debtors' first chapter 13 case is filed

March 23, 2009 - Aug. 5, 2013

Time during which the three-year period is suspended by pendency of the debtors' first case, plus 90 days

Aug. 6, 2013 - Aug. 24, 2014

Time after which the return was last due runs for an additional one year and 18 days until the debtors file the present case

In total, the time during which the period specified in § 507(a)(8)(A)(i) ran prior to the commencement of this case was only two years and 177 days, not three years.¹ As a result, the court concludes the claim is entitled to priority and the objection will be overruled. The court will hear the matter.

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- 1 The debtors rely solely on § 507(a)(8)(A)(i), which provides priority for taxes for which a return was last due, including extensions, within the three-year period before the petition date. They have not addressed the other independent grounds on which the claim might be entitled to priority. See § 507(a)(8)(A)(ii) and (iii). Because the court finds the debtors are incorrect about the three-year period, the court need not reach the alternative grounds for priority.
 - 2 If the debtors did not apply for an extension in 2007 and April 15, 2007 was the start date of the period after which the return was last due, the calculation works out to two years and 360 days, almost but not quite three years. The result would be the same - the FTB's claim would be entitled to priority.

11. 15-90687-D-13 THALISHA CALL MOTION TO CONFIRM PLAN
MMS-2 12-9-15 [55]

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.

12. 15-90995-D-13 ANA MEJIA MOTION TO CONFIRM PLAN
MRL-2 12-7-15 [35]

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. 13-91898-D-13 ROY/DORENE CORSON MOTION TO MODIFY PLAN
BSH-5 12-9-15 [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.

14. 15-91100-D-13 CHRIS MACDONALD OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
1-11-16 [35]

15. 14-90962-D-13 JOSE/TERESA MOTA MOTION TO SELL
CJY-2 1-13-16 [47]

16. 10-94365-D-13 JONATHAN/MICHELLE MAX MOTION TO SELL
CJY-3 1-12-16 [60]

Tentative ruling:

This is the debtors' motion for permission to short sell certain real property. The court intends to continue the hearing because the moving parties served only the chapter 13 trustee, the United States Trustee, and the two parties that have requested special notice in this case, and failed to serve any of the several other creditors, as required by Fed. R. Bankr. P. 2002(a)(2). The court will hear the matter.

17. 15-91094-D-13 JESSE/NICHOLL FRANCO OBJECTION TO CONFIRMATION OF
RDG-3 PLAN BY RUSSELL D. GREER
1-11-16 [35]
18. 15-91197-D-13 CATHERINE CORINA CONTINUED MOTION TO DISMISS
RDG-1 CASE
1-5-16 [19]