

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

February 21, 2017 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.	14-91300-D-13	EVELYN GILLIANA	MOTION TO MODIFY PLAN
	CJY-1		1-16-17 [27]

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.

2. 16-90700-D-13 SAMANTHA FITZGERALD MOTION TO CONFIRM PLAN
JAD-2 1-9-17 [37]

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.

3. 14-91502-D-13 NATIKA MABRY MOTION TO MODIFY PLAN
JCK-3 1-16-17 [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 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.

4. 16-91116-D-13 NICSSON MORADKHANIAN MOTION FOR RELIEF FROM
SSA-1 AUTOMATIC STAY AND/OR MOTION
VELMA HOWELL VS. FOR ADEQUATE PROTECTION
1-20-17 [35]

Final ruling:

This matter is resolved without oral argument. This is Velma Howell'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 there is no equity in the subject property and the creditor's interest in the real property 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.

5. 12-92921-D-13 JESSE/REGINA TOSCANO MOTION TO MODIFY PLAN
CJY-3 1-6-17 [83]

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.

6. 14-90241-D-13 CARL/MELISSA GREER
MSN-2

MOTION TO MODIFY PLAN
1-6-17 [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 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.

7. 12-91853-D-13 KENNETH/LORI FALKENSTROM
PGM-4

MOTION TO MODIFY PLAN
1-4-17 [63]

Tentative ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The trustee has filed opposition and the debtors have filed a reply. For the following reasons, the court intends to deny the motion.

The debtors filed this case in July of 2012 and obtained confirmation of a plan shortly thereafter. The plan provided for plan payments of \$200 per month for 60 months, with a 0% dividend to general unsecured creditors. The debtors' schedules at the time the case was filed included no income for Mr. Falkenstrom, who was listed as "Disabled/Homemaker." In January of 2016, the debtors' original attorney substituted out and their current attorney substituted into the case. Eight months later, on August 30, 2016, the debtors filed a motion to incur new debt to purchase a home. They stated they expected their mortgage payment to be \$3,350 per month, of which the debtors planned to pay \$2,000 and their son \$1,350. According to their Schedule J filed at the commencement of the case, the debtors were then paying rent of \$1,400 per month; the mortgage payment would have been \$600 per month higher. The motion to incur debt provided a great deal of detail about Mr. Falkenstrom having been laid off from his job before the case was filed and the physical difficulties he had as a result of almost 20 years of working as a flooring installer. The motion went on to detail Mrs. Falkenstrom's health difficulties and the debtors' resulting decision to move to a rental closer to her job. The motion added that Mr. Falkenstrom was able to find employment as a school bus driver, and his income "was actually a necessity for our family household such as food, gas, hospital bills and medication, school expenses, etc." Debtors' Motion to Incur Debt, DN 32, at 3:19-21. The debtors did not mention when Mr. Falkenstrom had gotten his new job and did not file amended Schedules I and J.

The trustee opposed the motion on that basis and in reply, the debtors filed amended Schedules I and J that showed Mr. Falkenstrom had gotten his new job two years earlier. The debtors never informed the trustee about the job, although it added \$1,738 in take-home pay to their income. With other changes, the debtors' monthly net income, as of September of 2016 when the schedules were filed, was \$1,900, as opposed to \$200, as listed on their original schedules. In other words, for some significant period of time, possibly up to two years, the debtors had monthly net income; that is, income in excess of their expenses, of \$1,700 more than the amount they were paying into their plan, \$200.

In fact, however, as the trustee points out, the \$1,900 figure is based on a mortgage payment of \$2,000, which was the amount the debtors' new mortgage payment would have been if the court had granted their motion to incur debt. However, the court denied that motion, so presumably, the debtors continued paying rent of \$1,400. Adding the difference, \$600, to the \$1,900 per month in monthly net income listed on the amended Schedule J brings the debtors' actual monthly net income to \$2,500 per month. The debtors concede the point in their reply: "The Trustee is correct to note that the rent was \$1,400.00 per month for the 24 months in question, and as a result, the Trustee correctly asserts that multiplying the resulting net income of \$2,500.00 per month, results in \$60,000.00, less the \$4,800.00 paid in, or \$55,200.00 short paid in." Debtors' Reply, DN 82, at 1:28-2:4.

The debtors follow up that statement with an analysis that, so far as the court can tell, makes no sense: "However, the total amount of \$2,500.00 includes \$1,700.00 of the net of \$1,738.44, leaving the debtor \$38.44 for working each month. If the \$38.44 and the \$500.00 of increased rent that is not applicable, for 24 months, the balance would be \$12,922.26, that was short paid in." Reply, at 2:5-9. The \$1,738.44 figure is the amount of Mr. Falkenstrom's take-home pay from the job he got roughly two and a half years ago. The court does not understand what the debtors mean by the phrase "leaving the debtor \$38.44 for working each month." In fact, Mr. Falkenstrom takes home \$1,738 per month, not \$38.44, and there is no reason to deduct \$1,700 from the \$2,500 in monthly net income the debtors have had the past two and a half years in order to calculate the amount the debtors have retained for themselves at the expense of their creditors. They have retained for themselves \$2,300 per month (\$2,500 monthly net income minus \$200 plan payment), not \$2,300 minus \$1,700.

Thus, as of September of 2016, the debtors had retained for themselves, at the expense of their creditors, \$55,200, not \$12,922, as the debtors would like the court to believe. Given the gross disparity between these figures, the debtors' failure to report Mr. Falkenstrom's new job to the trustee or, presumably, to their attorney, and finally, the debtors' weak excuses, the debtors have failed to establish that the plan has been failed in good faith.

First, the debtors refer to the cost of living, which they claim has "forced adjustments" in their expenses, but that argument ignores the fact that their own amended schedules, filed just six months ago - when they were trying to buy a house, show monthly net income of \$1,900 (actually, \$2,500 when the difference between their proposed mortgage payment and their actual rent payment is taken into account). Second, they state they will have to get their proposed lump-sum payment in the 60th month of the plan, \$14,700, from family members as the debtors do not have it. This evidences nothing more than an unsatisfactory inability or unwillingness to explain how they spent roughly \$55,000 over a two-year period when their own amended schedules reflect they did not need that excess income.

Finally, the debtors blame their original attorney's retirement and their general confusion about bankruptcy:

[W]e are paying all of our disposable income to our creditors to the best of our ability, as evidenced by the true and correct updated financial statements [Schedules I and J] filed on September 21, 2016, Docket #42. [¶] Our lack of understanding was evident when we looked to pursue a home in early 2016. The volume of legal verbiage is foreign to our eyes and overwhelming. We were shuffled through 3-4 different attorneys when our initial attorney, Scott Coben, retired. Overall, we discovered that we

were to inform the Trustee of new employment income after time passed and we are truly sorry. We didn't withhold any information on purpose or knowingly withhold monies.

Debtors' Decl., DN 66, at 3:21-27. This testimony conflicts with the debtors' Rights & Responsibilities, signed by them on July 2, 2012, in which they agreed to keep the trustee and their attorney informed of their employment status, of any increases in their income, and of any intent to transfer or otherwise dispose of property with a value of \$1,000 or more. Two and a half years ago, the debtors experienced a change that fell within all of these categories - Mr. Falkenstrom got a job and they began to receive \$1,738 in take-home pay each month that they had not had before. They apparently disposed of that income as they saw fit and are now unable to explain where the money went.

For the reasons stated, the court cannot conclude that the plan has been proposed in good faith and the motion will be denied. The downside, of course, is that the debtors, having waited two years to disclose their dramatic increase in income, and then only in response to the trustee's opposition to their motion to incur debt, will complete their current plan in five months, having retained for themselves the benefits of their non-disclosure. The court will look to the trustee for suggestions as to whether this situation can be remedied.

The court will hear the matter.

8. 16-91053-D-13 BRADFORD/WENDY SUMMERS OBJECTION TO DEBTORS' CLAIM OF
RDG-3 EXEMPTIONS
1-13-17 [25]

Final ruling:

This case was dismissed on January 24, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

9. 16-90159-D-13 ASHUR SHIBA CONTINUED MOTION TO RECONSIDER
MRG-1 12-29-16 [57]

10. 12-90362-D-13 HENRY/LENA SCHUCHTERMAN MOTION TO VALUE COLLATERAL OF
CJY-4 BANK OF AMERICA, N.A.
1-13-17 [65]

Final ruling:

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

11. 12-90362-D-13 HENRY/LENA SCHUCHTERMAN MOTION TO VALUE COLLATERAL OF
CJY-5 BANK OF AMERICA, N.A.
1-13-17 [69]

Final ruling:

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

12. 11-94066-D-13 DAVID MYERS AND DANICA MOTION TO VALUE COLLATERAL OF
CJY-4 BOYLE-MYERS WELLS FARGO BANK
1-12-17 [55]

Final ruling:

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

13. 16-90868-D-13 LISA COOPER OBJECTION TO DEBTOR'S CLAIM OF
RDG-6 EXEMPTIONS
1-13-17 [83]

Final ruling:

This is the trustee's objection to the debtor's claims of exemption. On January 22, 2017, the debtor filed an amended Schedule C. As a result of the filing of the amended Schedule C, the present objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

14. 12-92273-D-13 DEBBIE DEAN MOTION TO MODIFY PLAN
DEF-12 12-29-16 [167]
15. 16-91105-D-13 DAVID/ELOISA VALENCIA OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
1-30-17 [23]
16. 16-90314-D-13 TERRY FULLEN MOTION TO SELL
JAD-2 1-31-17 [50]
17. 16-90314-D-13 TERRY FULLEN MOTION FOR RELIEF FROM
RAR-2 AUTOMATIC STAY AND/OR MOTION
THE ESTATE OF RICHARD FOR RELIEF FROM CO-DEBTOR STAY
EMMONS, DECD. VS. 2-8-17 [62]

18. 16-90718-D-13 DANA JONES OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
1-30-17 [41]
19. 16-91153-D-13 RICARDO MARTINEZ AND EVA OBJECTION TO CONFIRMATION OF
PPR-1 HERNANDEZ PLAN BY U.S. BANK NATIONAL
U.S. BANK NATIONAL ASSOCIATION ASSOCIATION
ASSOCIATION VS. 1-27-17 [14]
- Final ruling:**
- This is the objection of U.S. Bank (the "Bank") to confirmation of the debtors' proposed chapter 13 plan. Pursuant to the court's Notice of Chapter 13 Bankruptcy Case, objections to confirmation were to be set for hearing on March 21, 2017 at 10:00 a.m. Accordingly, this objection will be continued to that date and time. No appearance is necessary on February 21, 2017.**
- In the meantime, the Bank shall file a notice of continued hearing and serve it, together with the objection, on the joint debtor at her address, which is different from the debtor's address. The Bank shall provide the joint debtor with no less than 14 days' notice of the continued hearing.**
20. 16-90959-D-13 KARMELA BADELBOU MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY AND/OR MOTION
JPMORGAN CHASE BANK, N.A. FOR RELIEF FROM CO-DEBTOR STAY
VS. 1-30-17 [20]
21. 16-90976-D-13 KURT/MARIA OBISPO MOTION FOR RELIEF FROM
PPR-1 AUTOMATIC STAY AND/OR MOTION
DEUTSCHE BANK NATIONAL TRUST FOR ADEQUATE PROTECTION
COMPANY VS. 1-24-17 [50]