

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

March 20, 2018 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.	16-90802-D-13	WILLIAM LEMMONS	MOTION TO MODIFY PLAN
	DCJ-3		2-3-18 [67]

2.	17-90808-D-13	LYNN/DONNA PORTER	MOTION FOR RELIEF FROM
	KMR-1		AUTOMATIC STAY
	DEUTSCHE BANK NATIONAL TRUST		2-8-18 [38]
	COMPANY VS.		

Final ruling:

This matter is resolved without oral argument. This is Deutsche Bank National Trust Company'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 subject 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.

3. 16-90921-D-13 JOHN/JULIE HOLDER MOTION TO MODIFY PLAN
RLF-2 2-6-18 [41]

4. 10-94640-D-13 BETH LEONARDO-WYATT MOTION TO AVOID LIEN OF
SDM-6 DISCOVER BANK
2-2-18 [102]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Discover Bank (the "Bank"). The motion will be denied for insufficient evidence of service. First, the proof of service is signed under oath as to the declarant's age and citizenship only and not as to the facts of service, as required by 28 U.S.C. § 1746. Second, the moving party failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Bank (1) by certified mail addressed to "David W. Nelms, ATTN: Officer For Service Of Process"; (2) by certified mail addressed to the Bank, "ATTN: Officer For Service Of Process"; and (3) by first-class mail addressed to the Bank, "DFS Services LLC." The first and second methods were insufficient because service on an FDIC-insured institution must be to the attention of an officer, not an "officer for service of process." (The first method was also insufficient because it did not name the Bank at all.) The third method was insufficient because it was not by certified mail and was not addressed to the attention of an officer, both as required by Rule 7004(h).

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

5. 16-90946-D-13 DIANE HATTON MOTION TO MODIFY PLAN
DCJ-4 2-4-18 [66]

6. 16-90250-D-13 KATHRYN RICHARDSON MOTION TO MODIFY PLAN
JAD-2 2-7-18 [30]

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. 16-90159-D-13 ASHUR SHIBA MOTION TO MODIFY PLAN
TLC-2 2-9-18 [81]

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.

8. 17-90869-D-13 KAY PARKER MOTION TO CONFIRM PLAN
JCK-4 2-16-18 [49]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the debtor failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The moving party filed her schedules of creditors two weeks into the case, and when she did so, she failed to amend her master address list. Thus, when she utilized the PACER matrix for service of this motion, she failed to serve the Stanislaus County Tax Collector, listed on her Schedule D as holding claims against five different real properties totaling more than \$16,000.

The motion will be denied for the additional independent reason that the moving party failed to give 42 days' notice, as required by LBR 3015-1(d)(1) and applicable rules. Depending on whether the proof of service filed February 16, 2018 is correct or the one filed February 21, 2018, the moving party gave either 28 or 32 days' notice.

As a result of these service and notice defects, the motion will be denied and the court need not address the other issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

9. 17-90585-D-13 JOHN/FELICE CIZMICH MOTION TO CONFIRM PLAN
DCJ-2 2-5-18 [36]

Final ruling:

This is the debtors' motion to confirm a second amended chapter 13 plan. The motion will be denied because the plan provides for the secured claim of O'Reilly Automotive Stores as a Class 2 claim in the amount of \$0 based on the allegation that O'Reilly holds a lien that is avoidable under § 522(f) of the Bankruptcy Code, whereas the debtors have failed to obtain an order avoiding the lien, as required by LBR 3015-1(i).

In a pattern that is too common with the attorney who represents the debtors in this case, the debtors' motion to confirm their first amended plan was denied for this same reason. In fact, the debtors' new motion states, "A first amended plan was filed on October 31, 2017, but was denied confirmation on December 12, 2017 primarily because an order had not been entered valuing the collateral of a judgment creditor at \$0. This issue will be resolved prior to the hearing on this present motion." Debtors' Motion, DN 36, at 1:24-2:1. Yet the debtors have still failed to file a motion to avoid O'Reilly's lien. It appears the debtors in this case are merely delaying their creditors and wasting the court's time.

For this reason, the motion will be denied by minute order. No appearance is necessary.

10. 17-90992-D-13 TANESIA LONIEN CONTINUED OBJECTION TO
RDG-2 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
1-29-18 [23]

11. 18-90106-D-13 ROBERT/JULIET ALVAGI MOTION TO VALUE COLLATERAL OF
JAD-1 CARMAX BUSINESS SERVICES, LLC
3-5-18 [9]

12. 18-90108-D-13 ELVA RESENDEZ MOTION TO EXTEND AUTOMATIC STAY
PSB-1 3-3-18 [10]

13. 18-90109-D-13 SHARON JONES MOTION FOR TEMPORARY WAIVER OF
THE CREDIT COUNSELING
REQUIREMENT
2-21-18 [9]

Final ruling:

This case was dismissed on March 5, 2018. As a result the motion will be denied by minute order as moot. No appearance is necessary.

14. 17-90812-D-13 PAMELA LOOPER CONTINUED MOTION TO CONFIRM
PGM-1 PLAN
1-22-18 [36]

15. 17-90713-D-13 BRANDY DURKEE CONTINUED MOTION TO CONFIRM
RS-2 PLAN
12-18-17 [41]

16. 18-90023-D-13 JOSEPH SHAW AND MARY
RDG-1 INDERBITZIN-SHAW OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
2-26-18 [29]
17. 17-90727-D-13 EILEEN SPEER
PBG-1 CONTINUED MOTION TO CONFIRM
PLAN
1-18-18 [44]
18. 17-91032-D-13 JOSEPH/TERI FREITAS
RDG-1 OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
2-26-18 [15]
19. 17-91032-D-13 JOSEPH/TERI FREITAS
JAD-1 MOTION TO VALUE COLLATERAL OF
SAFEAMERICA CREDIT UNION
3-2-18 [18]

20. 17-91036-D-13 DEBORAH KIRKLE
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
2-26-18 [18]

21. 16-91066-D-13 ALEJANDRO YANEZ AND
TOG-1 CLAUDIA ALVARADO

CONTINUED MOTION TO MODIFY PLAN
1-18-18 [18]

Final ruling:

This matter has been resolved and an order modifying the plan was entered on March 14, 2018. As such, the matter removed from calendar.