

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

April 17, 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 FOR RELIEF FROM
	EAT-1		AUTOMATIC STAY
	WELLS FARGO BANK, N.A. VS.		3-12-18 [77]

Final ruling:

This case was dismissed on March 29, 2018. As a result the motion will be denied by minute order as moot. No appearance is necessary.

2.	16-90802-D-13	WILLIAM LEMMONS	OBJECTION TO CLAIM OF
	RDG-4		SPECIALIZED LOAN SERVICING,
			LLC, CLAIM NUMBER 8-1
			3-12-18 [74]

Final ruling:

This case was dismissed on March 29, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

3. 18-90003-D-13 MATTHEW/MELISSA DICKENS MOTION TO CONFIRM PLAN
MSN-1 3-12-18 [18]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties failed to give adequate notice. The moving parties gave only 36 days' notice rather than 42 days', as required by LBR 3015-1(d) (1) and the rules cited therein.

As a result of this notice defect, the motion will be denied by minute order. No appearance is necessary.

4. 16-90910-D-13 DURLABH GANDHI MOTION TO MODIFY PLAN
TLC-2 3-5-18 [117]

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.

5. 16-90921-D-13 JOHN/JULIE HOLDER OBJECTION TO CLAIM OF MDG USA,
RDG-2 INC, CLAIM NUMBER 25
3-14-18 [51]

6. 16-90227-D-13 NICHOLAS MCFADDEN MOTION TO MODIFY PLAN
PLG-3 3-12-18 [82]

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. 18-90127-D-13 RAMON GONZALES AND SILVIA MOTION TO VALUE COLLATERAL OF
TOG-1 ESQUIVEL CARMAX AUTO FINANCE
3-5-18 [8]

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.

8. 14-91544-D-13 REID LANTRIP OBJECTION TO CLAIM OF ATLAS
RDG-1 ACQUISITIONS, LLC, CLAIM NUMBER
8
3-13-18 [64]

9. 14-91544-D-13 REID LANTRIP OBJECTION TO CLAIM OF ONEMAIN
RDG-2 FINANCIAL ISSUANCE TRUST 20142,
CLAIM NUMBER 9
3-13-18 [67]

10. 17-90564-D-13 DANIEL/GERARDEE DONNAN MOTION TO CONFIRM PLAN
JAD-3 2-16-18 [50]

Tentative ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. Their mortgage lender, Bayview Loan Servicing, LLC ("Bayview") has filed opposition. For the following reasons, the motion will be granted.

Bayview's opposition is largely historical, referring to the debtors' alleged numerous defaults, resulting in two loan modifications, their default some three years after the second loan modification, Bayview's foreclosure notices, the filing of this case, and the debtors' plans, of which Bayview opposed the second and third amended. Bayview's only objection to this plan in particular is that it understates Bayview's pre-petition arrears at \$16,077 whereas, according to Bayview, the correct

amount is \$22,083. However, the same day Bayview's opposition was filed, the court sustained the debtors' objection to Bayview's arrears claim, reducing it from \$6,606 to \$600, as requested by the debtors. Taking Bayview's alleged \$22,083, deducting \$6,606, and adding \$600 results in arrears of \$16,077, the amount provided for by the plan.

For the reasons stated, the motion will be granted. The court will hear the matter.

11. 17-90564-D-13 DANIEL/GERARDEE DONNAN OBJECTION TO NOTICE OF
JAD-4 POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
2-16-18 [58]

Tentative ruling:

This is the debtors' objection to the Notice of Post-Petition Mortgage Fees, Expenses and Charges filed November 28, 2017 by Bayview Loan Servicing, LLC ("Bayview") (the "Notice"). Bayview has filed opposition. For the following reasons, the objection will be sustained.

The Notice asserted attorney's fees of \$650 were incurred on the debtors' account on August 22 and September 7, 2017. No other details were provided and the debtors objected that they did not know what the fees were for. The only aspects of the opposition that are relevant to the objection are the assertions that (1) \$400 was charged by Bayview's attorney for opening a file, reviewing the schedules and plan, and assessing whether an objection was needed, and \$250 was charged for filing a proof of claim; and (2) the deed of trust provides for attorney's fees.

The court is not persuaded Bayview needed an attorney to prepare its proof of claim. The attachments were clearly all provided by employees of Bayview and the figures in the proof of claim came from the attachments. And although the debtor's original plan had been filed with their petition, on July 10, 2017, the only document filed by Bayview's attorney by September 7, 2017 was a request for special notice. Finally, there is no evidence Bayview is an oversecured creditor, as required for it to recover its attorney's fees from the debtors under § 506(b) of the Code. The only evidence of the value of the property is the debtors' Schedule A, on which they valued it at \$369,366, whereas Bayview's claim is for \$382,856.

For the reasons stated, the objection will be overruled. The court will hear the matter.

12. 14-90068-D-13 MARIA CARLOS CONTINUED MOTION TO MODIFY PLAN
JAD-2 12-15-17 [52]

13. 15-91195-D-13 SOMCHAY/SANDY VONGSENA MOTION TO MODIFY PLAN
TOG-6 2-27-18 [86]
14. 18-90154-D-13 EDWARD/KAREN WICKMAN MOTION TO VALUE COLLATERAL OF
MRG-1 BBVA COMPASS
4-3-18 [15]
15. 18-90181-D-13 PEIRRE CHAHOUD MOTION TO EXTEND AUTOMATIC STAY
GMW-3 4-3-18 [14]
- Final ruling:**
- This case was dismissed on April 9, 2018. As a result the motion will be denied by minute order as moot. No appearance is necessary.**
16. 18-90221-D-13 SENEN TORRES MOTION FOR TEMPORARY WAIVER OF
THE CREDIT COUNSELING
REQUIREMENT
4-3-18 [9]