

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

May 5, 2015 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.	11-94405 -D-13 TOG-19	LEONARDO VASQUEZ AND MARIA MELENDEZ	MOTION TO MODIFY PLAN 3-16-15 [165]
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2.	13-90205 -D-13 PGM-9	MATTHEW/JOSIELYNN CRUDO	AMENDED MOTION TO MODIFY PLAN 4-6-15 [181]
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7. [10-91528](#)-D-13 ANGEL/ANGELICA MARTINEZ MOTION TO INCUR DEBT AND/OR
CJY-1 MOTION TO TRANSFER
4-7-15 [[44](#)]

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 to Incur Debt and Motion to Transfer is supported by the record. As such the court will grant the motion by minute order. No appearance is necessary.

8. [15-90230](#)-D-13 PATRICIA ROLAND MOTION TO CONFIRM PLAN
BSH-1 3-11-15 [[10](#)]

9. [15-90139](#)-D-13 ROBERTO VENTURA OBJECTION TO CONFIRMATION OF
RDG-3 PLAN BY RUSSELL D. GREER
4-2-15 [[21](#)]

10. [13-90544](#)-D-13 JOSEPH/RAECHEL BAIROS MOTION TO MODIFY PLAN
CJY-3 3-24-15 [[51](#)]

11. [15-90255](#)-D-13 BERNARD CLARK
ASW-1
CAPITAL INCOME AND GROWTH
FUND, LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-2-15 [[16](#)]

Tentative ruling:

This is Capital Income and Growth Fund, LLC's (the "Movant") motion for relief from stay. The Movant asserts, and it is not disputed, that it foreclosed on the real property that is the subject of this motion pre-petition. Movant further asserts that as a result of this pre-petition foreclosure sale the debtor has only have a possessory interest in the property. Accordingly, cause exists for relief from stay under Bankruptcy Code § 362(d)(1). The debtor opposes the motion and asserts the pre-petition trustee sale was unlawful and the result of fraud, and as such, the subsequent unlawful detainer action void. The debtor further disputes Movant's standing to bring the motion. Pursuant to Code § 362(g) the moving party has the burden of proof to demonstrate that there is no equity in the property, and the debtor has the burden of proof on all other issues.

The debtor's assertion that the pre-petition foreclosure sale is void is not a meritorious defense to the relief from stay motion. Stay litigation is limited in scope to issues of adequate protection, equity in the property, and whether the property is necessary for an effective reorganization. The validity of the claim, or contract underlying the claim, is not litigated during a relief from stay hearing. In re Johnson, 759 F.2d 738 (9th Cir. 1985). Stay relief hearings do not involve a full adjudication on the merits of the claims, defenses, or counter-claims, but simply a determination as to whether creditor has a colorable claim. In re Robins, 310 B.R. 626 (9th Cir. BAP 2004).

The debtors claim that because the initial holder of the promissory note did not conduct the foreclosure, Movant does not have standing to bring this motion. However, under California Civil Code § 2924(a)(1), a "trustee, mortgagee, beneficiary, or any of their authorized agents may conduct the foreclosure process. . . . There is no stated requirement in California's non-judicial foreclosure scheme that requires a beneficial interest in the note to foreclose. These is also no requirement for the production of the original note to initiate a non-judicial foreclosure. Rather, the statute broadly allows a trustee, mortgagee, beneficiary, or any of their authorized agents, to initiate non-judicial foreclosure. According, the statute does not require a beneficial interest in both the note and deed of trust to commence a non-judicial foreclosure sale." Lydia Manlangit v. National City Mortgage, 210 Westlaw 2044687 (E.D. CA May 2010). Also, see Hafiz v. Greenpoint Mortg. Funding, Inc., 652 F.Supp. 2d 1039.

As Movant has established it foreclosed on the property pre-petition and the debtor has only a possessory interest in the property, relief from stay will be granted under Code § 362(d)(1) by minute order.

The court will hear the matter.

12. [15-90060](#)-D-13 TROY/DEBORAH EDWARDS OBJECTION TO DEBTORS' CLAIM OF
RDG-2 EXEMPTIONS
3-20-15 [[14](#)]

Final ruling:

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

13. [12-90662](#)-D-13 SERGIO DA ROCHA AND MOTION TO MODIFY PLAN
CJY-2 CECILIA ROCHA 3-31-15 [[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 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. [15-90262](#)-D-13 ERIC/REBECCA BURKE MOTION TO VALUE COLLATERAL OF
CJY-1 GREEN TREE SERVICING, LLC
3-25-15 [[14](#)]

Final ruling:

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

15. [15-90262](#)-D-13 ERIC/REBECCA BURKE MOTION TO AVOID LIEN OF UNIFUND
CJY-2 CCR PARTNERS
3-25-15 [[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. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

16. [13-91372](#)-D-13 TODD/ROSIE JONES MOTION FOR RELIEF FROM
GSR-1 AUTOMATIC STAY AND/OR MOTION
ALL 1 REALTY VS. FOR ADEQUATE PROTECTION
4-2-15 [[66](#)]

17. [11-91075](#)-D-13 SARAH MARTIN MOTION TO MODIFY PLAN
DCJ-2 3-15-15 [[66](#)]

18. [12-90176](#)-D-13 KURT/ROSEANNA SHAKAL MOTION TO MODIFY PLAN
CJY-4 3-20-15 [[49](#)]

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.

19. [14-91487](#)-D-13 ALMA LINTA MOTION TO INCUR DEBT
CAH-4 3-27-15 [[39](#)]
20. [11-93492](#)-D-13 KEVIN/BOBBIE YOUNG CONTINUED MOTION TO MODIFY PLAN
MLP-9 1-28-15 [[148](#)]
21. [15-90166](#)-D-13 CONNIE GONZALEZ MOTION TO APPROVE LOAN
CJY-2 MODIFICATION
4-21-15 [[28](#)]
22. [15-90167](#)-D-13 BERNADETTE QUILES MOTION TO APPROVE LOAN
CJY-2 MODIFICATION
4-21-15 [[33](#)]
23. [15-90384](#)-D-13 GILBERT ANAYA OBJECTION TO CERTIFICATION BY A
DEBTOR
4-29-15 [[9](#)]