

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 26, 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.	14-23906-D-13	JOHN/CATHY RAY	MOTION FOR COMPENSATION FOR
	PGM-2		PETER G. MACALUSO, DEBTORS'
			ATTORNEY

Tentative ruling:

6-15-16 [37]

This is the application of the debtors' counsel for additional attorney's fees. The trustee has filed a response and the debtors have filed a reply. The court is not prepared to consider the application at this time because the applicant failed to serve the Social Security Administration, by far the largest creditor in the case and (according to the debtors' reply) the only one remaining to be paid through the debtors' confirmed plan, at its address on the Roster of Governmental Agencies or through the attorney who represented it in the adversary proceeding that generated the fees sought in the application. The court intends to continue the hearing and permit the applicant to file a notice of continued hearing and serve it, together with the application and supporting documents, on the Social Security Administration, at the required addresses. The applicant should note, for purposes of the notice of continued hearing, that the notice of this hearing gave incorrect information in the text about the time of the hearing, the courtroom and department.

The court will hear the matter.

2. 15-29707-D-13 ERIK/SYLIVIA PATTEN MOTION TO CONFIRM PLAN
DEF-3 5-27-16 [38]

Final ruling:

This case was dismissed on May May 31, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

3. 16-23012-D-13 DEBORAH MCCROREY OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
6-27-16 [14]

4. 16-22818-D-13 WILLIE/JOYETTE WILLIAMS OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
6-27-16 [19]

5. 16-21519-D-13 BENNY/LUCY YERRO MOTION TO VALUE COLLATERAL OF
CJY-1 SPECIALIZED LOAN SERVICING, LLC
7-1-16 [16]

Final ruling:

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

6. 15-20134-D-13 JANICE FONG MOTION TO MODIFY PLAN
JCK-2 6-9-16 [18]

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. 16-22336-D-13 LARRY/MICHELLE OLIVAN CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-2-16 [18]

8. 16-21939-D-13 LARY/NENA ULEP MOTION TO CONFIRM PLAN
SJS-1 6-6-16 [17]

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.

9. 16-21941-D-13 DOLAN PARKER MOTION TO CONFIRM PLAN
GMW-2 6-17-16 [40]

Final ruling:

This is the debtor's motion to confirm a first amended chapter 13 plan. On July 6, 2016, the debtor filed a second amended plan and a motion to confirm it. As a result of the filing of the second amended plan, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

10. 16-20443-D-13 STEPHANIE JOHNSON CONTINUED MOTION TO CONFIRM
BSH-2 PLAN
5-3-16 [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 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.

11. 16-22943-D-13 FALEMEI FINAU OBJECTION TO CONFIRMATION OF
EAT-1 PLAN BY WELLS FARGO BANK, N.A.
6-27-16 [31]

12. 16-22943-D-13 FALEMEI FINAU OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
6-27-16 [34]

13. 16-21147-D-13 SHERON MAGSAYO OBJECTION TO DEBTOR'S CLAIM OF
RDG-4 EXEMPTIONS
6-20-16 [59]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The debtor has not filed a response. The court agrees with the trustee that the debtor's failure to list the dollar amounts of the debtor's various exemption claims renders it impossible to assess whether the exemptions are properly claimed. Accordingly, the court will issue a minute order sustaining the trustee's objection. No appearance is necessary.

14. 16-23647-D-13 GINA CRONIN CONTINUED MOTION TO EXTEND
DCJ-1 AUTOMATIC STAY
6-14-16 [9]
15. 16-23053-D-13 STEVEN BECKER OBJECTION TO CONFIRMATION OF
RDG-3 PLAN BY RUSSELL D. GREER
6-27-16 [28]
16. 16-22667-D-13 DALE/SHERRY HALEY OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
6-27-16 [14]
17. 16-22368-D-13 JAIME/HELEN GRACE AREVALO CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-2-16 [12]

18. 16-22874-D-13 ANITA TOMBOC MOTION TO VALUE COLLATERAL OF
MKM-2 WELLS FARGO BANK
6-16-16 [23]

Final ruling:

The matter is resolved without oral argument. This is the debtor's 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 debtor's 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.

19. 16-22874-D-13 ANITA TOMBOC OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
6-27-16 [27]

20. 15-29775-D-13 CLIFTON/CONCEPCION MOTION TO CONFIRM PLAN
CRG-4 GAYOTIN
6-2-16 [58]

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.

21. 16-20575-D-13 CARL CARMICHAEL MOTION TO CONFIRM PLAN
GMW-1
6-17-16 [38]

Tentative ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The trustee and creditor U.S. Bank have filed opposition. The court intends to treat this hearing as a status conference to consider the following issues.

The debtor's only scheduled creditor and the only creditor proposed to be paid through the plan is the Bank, which holds a first position deed of trust on certain real property in which, according to the debtor's Schedule A, the debtor owns a one-third interest. The Bank has filed a proof of claim for \$642,521. The debtor has filed a motion to value the secured portion of the Bank's claim at \$480,000, which the Bank has opposed. As indicated in its tentative ruling on that motion, also on this calendar, the court is inclined to grant the motion. The granting of that motion would establish the Bank's secured claim at \$480,000. That does not mean, however, as the debtor's plan suggests, that the balance of the claim simply disappears. (The plan proposes to pay the secured claim of \$480,000 and 0% of unsecured claims estimated at \$0.) Instead, under § 506(a) of the Bankruptcy Code, the Bank would have an unsecured claim in the amount of \$162,521 (\$642,521 minus \$480,000).

The trustee has objected to the plan on the ground it does not meet the projected disposable income test. The trustee is correct: the plan does not provide for the payment of unsecured claims in full (as indicated above, the debtor does not propose to pay anything on the unsecured portion of the Bank's claim), and does not provide that all of the debtor's projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors. The debtor is clearly an above-median income debtor and his applicable commitment period is five years, whereas the plan term is only 13 months. Because the plan does not satisfy §1325(b) of the Code, it cannot be confirmed over the trustee's objection. (The Bank's opposition does not clearly articulate a similar objection; however, the court will hear from the Bank on the issue.) Because this issue appears to be dispositive of the motion, the court need not address the other issues raised by the trustee and the Bank unless this issue is resolved.

The court intends to use this hearing as a status conference for the parties to consider these issues and determine what further action they wish to take. The debtor should also be prepared to provide additional information about his one-third interest in the property. The loan documents attached to the Bank's proof of claim indicate the debtor is the sole obligor on the loan and the sole trustor on the deed of trust. Thus, it appears the debtor was the sole owner of the property at the time the loan was made, in December of 2006, and that he transferred a two-thirds interest (or two one-third interests) to others at some later time. The debtor should be prepared to inform the court when he made the transfers, what consideration he received for them, and whether the \$1,500 per month in rental income listed on the debtor's Schedule I is the full amount of rent paid by the tenants or whether the debtor's co-owners also receive rental income, and if so, how much.

The court will hear the matter.

22. 16-20575-D-13 CARL CARMICHAEL
GMW-2

MOTION TO VALUE COLLATERAL OF
U.S. BANK, N.A.
6-27-16 [47]

Tentative ruling:

This is the debtor's motion to value collateral of U.S. Bank (the "Bank"); namely, a first position deed of trust against a rental property owned by the debtor. The Bank has filed opposition. For the following reasons, the motion will be granted.

In support of his motion, the debtor has submitted his own declaration and a declaration of Gregory L. Levitt, who testifies he has been a real estate appraiser for approximately 14 years. The Bank's opposition is supported by a broker's price opinion and supporting declaration of Rosabella Tapley, who testifies she is a real estate broker and has been inspecting properties and preparing broker's price opinions for about 13 years. Mr. Levitt concludes that the fair market value of the property is \$480,000; Ms. Tapley believes the value is \$555,000. For the following reasons, the court gives significantly greater weight to Mr. Levitt's opinion than to Ms. Tapley's.

First, Mr. Levitt is an appraiser - he testifies it is his primary occupation; Ms. Tapley is not. Second, Mr. Levitt has made positive and negative dollar adjustments to the sales or listing prices of his comparables, whereas Ms. Tapley has not. Mr. Levitt compared the debtor's property with three properties that have sold and one property that is currently listed; Ms. Tapley has chosen three sales and three listings. Although she has provided descriptive comments about the debtor's property and each of her comparables and noted differences between the debtor's property and each comparable in various categories (square footage; number of rooms, bedrooms, baths; existence of garage; and so on), she has not actually compared the properties. That is, she has not made a dollar adjustment up or down to the sale or listing price of each comparable to arrive at a comparable value for each. The court has no way to determine how she arrived at her \$555,000 value, except that the average price of Ms. Tapley's six comparables, including the three listings at their current listing prices, is \$555,000, which suggests that is how she arrived at her value. That method is not a commonly accepted method of valuing real property and the court finds it to be not as reliable as Mr. Levitt's method.

Third, Mr. Levitt's comparables are all within one mile of the debtor's property, whereas one of Ms. Tapley's sold properties is three miles away and her listings 1 and 2 are 5.85 and 6.09 miles away, respectively. Finally, Ms. Tapley's broker's price opinion plainly states her inspection was of the exterior of the debtor's property only, whereas Mr. Levitt inspected both the interior and exterior.¹ The Bank has not challenged Mr. Levitt's qualifications or any aspect of his appraisal, and the court finds no reason to discount or qualify his conclusion in any way. The Bank did not request an evidentiary hearing and did not request time to obtain a formal appraisal.

For the reasons stated, the court concludes the value of the debtor's property, for purposes of this motion and plan confirmation, is \$480,000.

The court will hear the matter.

1 The court notes also that for each of Ms. Tapley's comparables, the "sale type" is described as "Non-Arms Length." The court does not give significant weight to this factor because it may well be the description is simply a default description that Ms. Tapley did not verify. However, Ms. Tapley and the Bank had the opportunity to address this issue but did not.

23.	16-21375-D-13 MMN-2	ALBERTO VAZQUEZ-GARCIA	MOTION TO CONFIRM PLAN 6-1-16 [22]
24.	16-22875-D-13 RDG-2	EFRAIN BARBA	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 6-27-16 [22]
25.	16-23684-D-13 DCJ-1	JESUS/TERESA LOPEZ	CONTINUED MOTION TO EXTEND AUTOMATIC STAY 6-14-16 [9]
26.	15-20091-D-13 GMW-5	SONIA MCDADE-THREADGILL	MOTION TO MODIFY PLAN 6-3-16 [104]

27. 11-31094-D-13 VAN/KIMBERLY BLADES MOTION TO MODIFY PLAN
CJY-2 6-21-16 [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.

28. 16-22896-D-13 BERNARD/BARBARA VIGIL OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
6-27-16 [16]

29. 15-28869-D-13 JOSE/ARACELY RAMIREZ CONTINUED MOTION TO CONFIRM
TOG-3 PLAN
4-16-16 [41]