

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

September 15, 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.	14-90701-D-13	ALBERT MORGAN	MOTION TO MODIFY PLAN
	JAD-1		7-23-15 [23]

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.

2. 14-90702-D-13 LORENZO OJEDA AND IRMA MEDINA MOTION TO MODIFY PLAN
TOG-5 7-29-15 [126]

3. 12-93216-D-13 DEANNA DUNN MOTION TO REFINANCE
SDM-6 8-11-15 [90]

4. 12-93216-D-13 DEANNA DUNN MOTION TO MODIFY PLAN
SDM-7 8-11-15 [95]

5. 15-90723-D-13 MONIKA BEITBADAL MOTION FOR RELIEF FROM
BHT-1 AUTOMATIC STAY
CHRISTIANA TRUST VS. 8-10-15 [10]

Final ruling:

This case was dismissed on August 10, 2015. As a result the motion will be denied by minute order as moot. No appearance is necessary.

6. 15-90442-D-13 FELIPE/NOEMI LEDESMA MOTION TO CONFIRM PLAN
TOG-4 7-23-15 [25]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the service list attached to the proof of service is from a different case involving different debtors.

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

7. 15-90259-D-13 PAULA MACHT MOTION TO CONFIRM PLAN
JAD-1 7-22-15 [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 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.

8. 15-90566-D-13 HUGH/PENNY BRENNAN CONTINUED MOTION TO VALUE
JGL-2 COLLATERAL OF ONEMAIN FINANCIAL
7-31-15 [31]

Final ruling:

This motion has been resolved by stipulated order entered September 10, 2015. Matter removed from calendar.

9. 15-90566-D-13 HUGH/PENNY BRENNAN CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
7-24-15 [28]

10. 13-91367-D-13 GLENN/GLORIA CARRILLO MOTION TO VALUE COLLATERAL OF
PBG-1 U.S. BANK, N.A.
8-5-15 [30]

Final ruling:

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

11. 13-91367-D-13 GLENN/GLORIA CARRILLO CONTINUED MOTION TO DISMISS
RDG-1 CASE
8-4-15 [26]

12. 13-91970-D-13 JEAN VAUGHAN MOTION TO SELL
CJY-3 8-14-15 [52]

13. 15-90370-D-13 GEORGE/REBECCA SOMERS MOTION TO VALUE COLLATERAL OF
PBG-1 WELLS FARGO DEALER SERVICES
8-13-15 [39]

Tentative ruling:

This is the debtors' motion to value the collateral of Wells Fargo Bank (the "Bank"), a 2008 Toyota Sienna, at \$7,500. The Bank has filed opposition. For the following reasons, the motion will be denied.

The debtors' evidence in support of the motion consists of the testimony of debtor George Somers, together with a Kelley Blue Book printout and a Carmax appraisal offer. The debtor testifies he believes, based on his personal knowledge of the vehicle's value and researching other similar vehicles with similar mileage and in similar condition, that the vehicle is worth \$7,500. He states the vehicle is almost eight years old and has approximately 153,000 miles on it. He states it is in fair to good condition. The debtor states he also researched the vehicle through Kelley Blue Book, which "gave a price of \$6,477," and that his wife obtained an offer from Carmax to purchase the vehicle for \$5,500, which the debtor acknowledges is below the vehicle's fair market value. The Bank, in contrast, has submitted an NADA Used Car Guide summary showing a clean retail value of \$12,375 for a vehicle similar to the debtors'.

Pursuant to § 506(a)(2) of the Bankruptcy Code, a secured claim is to be valued based on the replacement value of the collateral securing the claim. For property acquired for personal, family, or household purposes, "replacement value" means the price a retail merchant would charge for property of the same kind considering the age and condition of the debtor's property. Here, the debtors have failed to submit any evidence of the vehicle's replacement value. The debtor testifies only as to his opinion of the vehicle's "value" and as to what he believes it is "worth." The Kelley Blue Book printout shows a private party value, which is not the applicable standard. The Carmax offer is just that - an offer by a retailer to purchase the vehicle from the debtors; as with the KBB valuation, this is not the applicable standard.

As the debtors have provided no evidence of the replacement value of the vehicle, they have failed to satisfy their burden of proof, and the motion will be denied. In the alternative, the court will grant the motion in part and value the vehicle and the Bank's secured claim at \$12,375.

The court will hear the matter.

14. 15-90370-D-13 GEORGE/REBECCA SOMERS MOTION TO VALUE COLLATERAL OF
PBG-2 AMERICREDIT FINANCIAL SERVICES,
INC.
8-13-15 [45]

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.

15. 11-91075-D-13 SARAH MARTIN MOTION TO MODIFY PLAN
DCJ-3 7-28-15 [77]

16. 12-91575-D-13 DUSTIN/JENNIFER MCHENRY MOTION TO MODIFY PLAN
JDP-3 7-27-15 [86]

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.

17. 11-93776-D-13 KELLI THOMAS MOTION TO COMPROMISE
CSL-2 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH RICKY GLENN
THOMAS
8-7-15 [41]

18. 14-91376-D-13 DAVID/SUSAN STRANSKY MOTION TO MODIFY PLAN
DCJ-1 7-28-15 [44]

Final ruling:

This case was converted to a case under Chapter 7 on September 9, 2015. As a result the motion will be denied by minute order as moot. No appearance is necessary.

19. 15-90281-D-13 JOSEPH CALDERON MOTION TO CONFIRM PLAN
JAD-1 7-20-15 [26]

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.

20. 15-90583-D-13 OLIVIA VENTURA OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
8-10-15 [32]

21. 15-90386-D-13 MICHAEL CARSON ORDER TO SHOW CAUSE
8-19-15 [51]

Final ruling:

The hearing on this order to show cause is continued to October 13, 2015 at 10:00 a.m. No appearance is necessary on September 15, 2015.

22. 15-90388-D-13 JOSEPH SHAW AND MARY CONTINUED OBJECTION TO
RDG-1 INDERBITZIN-SHAW CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-12-15 [18]

Final ruling:

The hearing on this objection is continued to October 13, 2015 at 10:00 a.m. No appearance is necessary on September 15, 2015.

23. 15-90499-D-13 KENNETH/TRACIE THORNE MOTION FOR RELIEF FROM
RDW-1 AUTOMATIC STAY AND/OR MOTION
CHEVRON FEDERAL CREDIT UNION FOR ADEQUATE PROTECTION
VS. 8-10-15 [65]
24. 15-90630-D-13 RANDY RAMIREZ OBJECTION TO CONFIRMATION OF
RDG-3 PLAN BY RUSSELL D. GREER
8-24-15 [55]
25. 11-90039-D-13 CARLOS/ELODIA GONZALEZ MOTION TO VALUE COLLATERAL OF
JDP-1 BANK OF AMERICA, N.A.
8-21-15 [50]
26. 15-90541-D-13 KUBANGUSU MAHUNGU CONTINUED MOTION TO VALUE
RS-2 COLLATERAL OF DEUTSCHE BANK
NATIONAL TRUST COMPANY
8-17-15 [40]

Final ruling:

This is the debtor's motion to value collateral of Deutsche Bank National Trust Company. The motion will be denied because the evidence of service is insufficient. The proof of service states that service was made on July 15, 2015, whereas the notice and motion were not signed until August 17, 2015 and the declaration was not signed until August 13, 2015. Similarly, the proof of service of the notice of continuance states that service was made on July 15, 2015, whereas the notice was not signed until August 25, 2015. Thus, the proofs of service are inaccurate.

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

27. 12-92642-D-13 MARSHALL/CARA CROOM MOTION TO INCUR DEBT
MSN-1 8-24-15 [47]
28. 10-91861-D-13 MICHAEL/LINDA CABRAL MOTION TO VALUE COLLATERAL OF
JDP-1 CITIBANK, N.A.
8-20-15 [61]
29. 15-90378-D-13 WALTER/CECILIA FERREIRA MOTION TO INCUR DEBT
JCK-5 8-26-15 [64]