

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

October 9, 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.	18-90424-D-13	TONY HANA	MOTION TO CONFIRM PLAN
	DCJ-1		8-16-18 [21]

2.	16-90227-D-13	NICHOLAS MCFADDEN	MOTION TO MODIFY PLAN
	PLG-3		8-28-18 [99]

Final ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied because the notice of hearing gives the hearing date as October 9, 2018 in the caption but September 25, 2018 in the text.

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

3. 18-90528-D-13 ENRIQUE VILLALOBOS MOTION TO VALUE COLLATERAL OF
JCK-3 MOCSE FEDERAL CREDIT UNION
8-28-18 [28]

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.

4. 18-90430-D-13 VINCENT COLMORE AND MOTION TO CONFIRM PLAN
JAD-6 ABANEATHA BISBEE COLMORE 9-4-18 [59]

5. 18-90333-D-13 DAVID LAKIN MOTION TO CONFIRM PLAN
YG-1 8-21-18 [37]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) there is no proof of service on file; (2) the moving party utilized a docket control number that has been utilized for a previous motion in this case, contrary to LBR 9014-1(c)(3); and (3) the motion states the debtor seeks confirmation of a First Amended Chapter 13 Plan, whereas there is no such plan on file. There are two different plans, both entitled simply "Chapter 13 Plan," with nothing in the title to distinguish them from one another.

For the reasons stated, the motion will be denied and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

6. 15-90351-D-13 HENRY PEREZ MOTION TO MODIFY PLAN
BSH-6 8-20-18 [81]

Final ruling:

This is the debtor's motion to confirm a chapter 13 plan. The moving papers say nothing about the plan being an amended plan or a modified plan. The debtor's current confirmed plan is a first modified plan. On August 20, 2018 and August 21, 2018, the debtor filed two different chapter 13 plans in this case, both titled simply "Chapter 13 Plan," with nothing in the title to distinguish them from one another or from the original plan filed in this case.¹ The proof of service refers

only to a "Chapter 13 Plan," and thus, it does not evidence whether the plan served was the one filed August 20 or the one filed August 21 (or the original plan).

In addition, the debtor filed two different notices of hearing of this motion, one giving the hearing date as September 18, 2018 and the other, as September 25, 2018. But the titles of the two notices of hearing were the same: "Notice of Hearing on Motion to Confirm Chapter 13 Plan." The proof of service filed with the second one, which refers to service of a document entitled "Amended Notice of Motion to Confirm Chapter 13 Plan," refers to a document that is not on file and there is insufficient evidence creditors were served with the notice of hearing giving the correct hearing date.

Finally, the moving party failed to serve the creditor listed on his Schedule D only as "DOT Lien Holder" with no address. This creditor is listed in the debtor's proposed plans as a Class 4 creditor to be paid directly by the debtor's non-filing spouse. That fact notwithstanding, this creditor is scheduled as a creditor of the debtor and the debtor has failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(9).

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

1 The court recognizes that the plan filed August 21 is on the current form of the chapter 13 plan, required in this district as of December 1, 2017, whereas the one filed August 20 was on the former form. The debtor's counsel may consider that the two are virtually the same plan; the court does not. Further, the plan filed August 20 does not include the Nonstandard Provisions that are included in the one filed August 21.

7. 13-90863-D-13 LEONCIO ALVARADO ORDER TO SHOW CAUSE
9-5-18 [201]
DEBTOR DISMISSED:
09/09/2015

Final ruling:

The hearing on this Order to Show Cause was continued by order to October 31, 2018 at 10:00 a.m. No appearance is necessary on October 9, 2018.

8. 18-90465-D-13 MARK/SHANNON CIMOLI MOTION TO CONFIRM PLAN
MDA-1 8-22-18 [42]

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. 18-90090-D-13 CLIFFORD BARBERA MOTION TO AVOID LIEN OF JOHNNY
DJC-5 W. WALLIN AND CHRISTINE WALLIN
9-11-18 [84]

Tentative ruling:

This is the debtor's motion to avoid a judicial lien held by Johnny Wallin and Christine Wallin (the "Wallins"). The Wallins have filed opposition. The debtor acknowledges in his declaration he acquired title to the property in question in 2017, whereas the Wallins' abstract of judgment was recorded in 2016. Thus, under the authorities cited by the Wallins, the lien cannot be avoided under § 522(f). According, the motion will be denied. The court will hear the matter.

10. 17-90409-D-13 JOHNATHAN MOHR CONTINUED MOTION TO CONFIRM
DCJ-5 PLAN
8-14-18 [113]

11. 18-90563-D-13 BRIAN/AMRITA MCINTYRE OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
9-17-18 [19]

12. 18-90564-D-13 TIM CORONADO OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
9-17-18 [15]

13. 18-90564-D-13 TIM CORONADO
SCC-1
OBJECTION TO CONFIRMATION OF
PLAN BY SANTA CLARA COUNTY,
DEPARTMENT OF CHILD SUPPORT
SERVICES
9-19-18 [18]

14. 18-90569-D-13 WILANN MOTON
RDG-1
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
9-17-18 [13]

Final ruling:

Per the stipulated order entered on October 1, 2018, this objection to confirmation of plan is continued to October 23, 2018 at 10:00 a.m. No appearance is necessary on October 9, 2018.

15. 18-23522-D-13 CLAUDIA ROCHA
AVN-2
MOTION TO SELL AND/OR MOTION
FOR TEMPORARY STAY O.S.T.
10-2-18 [64]