

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

October 28, 2014 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.	14-90702-D-13 TOG-1	LORENZO OJEDA AND IRMA MEDINA	MOTION TO CONFIRM PLAN 9-12-14 [69]
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2.	11-93803-D-13 JCK-5	JOHN SALZMAN AND DANIELLE NEVILLE-SALZMAN	MOTION TO INCUR DEBT 10-2-14 [72]
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3. 11-94405-D-13 LEONARDO VASQUEZ AND MOTION TO MODIFY PLAN
TOG-13 MARIA MELENDEZ 9-15-14 [129]

Final ruling:

This is the debtors' motion to confirm a third modified plan. The trustee filed opposition, pointing out that no plan was filed with the motion. The debtors responded by purporting to withdraw the motion. However, at that point, the debtors no longer had the ability to withdraw the motion unilaterally. See Fed. R. Bankr. P. 9014(c) and Fed. R. Civ. P. 41(a)(1) and (2), incorporated herein by Fed. R. Bankr. P. 7041. Thus, the court will deny the motion for failure to file the proposed modified plan referred to in the motion, as required by LBR 3015-1(d)(1). The court notes also that the proof of service purports to evidence service of a first amended plan, not a third modified plan.

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

4. 13-91812-D-13 DOUGLAS/KAREN METCALFE CONTINUED OBJECTION TO CLAIM OF
SSA-6 BRANCH BANKING & TRUST CO.,
Final ruling: CLAIM NUMBER 18
7-31-14 [90]

The matter is resolved without oral argument. After consideration of the supplemental declaration of Steven Altman filed October 15, 2014 and that there is no response or opposition to the objection and the court finds objection is sufficiently supported by the record. Accordingly, the court will sustain the debtors' objection to claim. Moving party is to submit an appropriate order. No appearance is necessary.

5. 14-90412-D-13 GREGORY/LINDA GRIJALVA MOTION TO CONFIRM PLAN
RLF-3 9-4-14 [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 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.

6. 14-91312-D-13 MAURICE MOODY MOTION TO VALUE COLLATERAL OF
FF-2 SPRINGLEAF FINANCIAL SERVICES,
Tentative ruling: INC.
9-29-14 [15]

This is the debtor's motion to value collateral of Springleaf Financial Services, Inc. The motion will be denied because the proof of service is not signed under oath concerning the facts of service, as required by 28 U.S.C. § 1746. In the proof of service, the declarant "declare[s] under penalty of perjury" that she is over the age of 18 and not a party to the action. However, she merely "certifies," not under the penalty of perjury, the facts of service - the date and manner of service and the titles of the documents served. Because the proof of service is not in compliance with 28 U.S.C. § 1746, the motion will be denied by minute order. Alternatively, the court will continue the hearing to allow the moving party to file an amended proof of service.

7. 11-94222-D-13 SHELLEY SHAHEN MOTION TO MODIFY PLAN
DCJ-4 9-16-14 [78]

Final ruling:

This is the debtor's motion to confirm a second modified plan. The motion states that the debtor seeks to confirm "a second modified Chapter 13 plan filed on September 16, 2014"; however, no plan was filed that day. The last plan filed in this case was a first modified plan, filed June 24, 2014. The court will deny the motion for failure to file the proposed plan referred to in the motion, as required by LBR 3015-1(d)(1). The motion will be denied by minute order. No appearance is necessary.

8. 12-91422-D-13 DANIEL GARCIA MOTION TO MODIFY PLAN
CJY-3 9-18-14 [45]

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.

9. 14-90823-D-13 ROBERT/MICHELE SANCHEZ MOTION TO CONFIRM PLAN
SJS-1 9-3-14 [31]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons. First, the moving parties failed to serve Carl Wang, listed on their Schedule G, whose lease the debtors propose in the plan to assume. Pursuant to Fed. R. Bankr. P. 1007(a)(1), the debtors were required to include Carl Wang on their master address list, which they failed to do. Pursuant to Fed. R. Bankr. P. 2002(b), the debtors were required to serve all creditors, including, given the very broad definition of "creditor" in the Bankruptcy Code (see § 101(5) and (10)), Carl Wang.

Second, the motion states that the plan has been amended to provide for 100% of general unsecured claims, whereas the plan itself provides for a dividend of only 61.13%.

As a result of these service and notice defects, 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.

10. 13-91633-D-13 DAVID/CAROL TRUAX MOTION TO MODIFY PLAN
JDP-2 9-19-14 [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 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.

11. 11-92535-D-13 JESSE JOHNSON OBJECTION TO CLAIM OF ROBERT
SSA-1 MORIAS, CLAIM NUMBER 9
9-4-14 [29]

Final ruling:

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

12. 14-90536-D-13 RICHARD/WILBERTA BLESSING MOTION TO CONFIRM PLAN
RLF-1 9-4-14 [37]

13. 14-90845-D-13 NORA AMBRIZ AND ALEJANDRO MOTION TO MODIFY PLAN
SAC-3 ORDONEZ 8-12-14 [40]

14. 14-91145-D-13 MARTHA KOPIEJ
PPR-1

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
9-15-14 [36]

15. 12-91549-D-13 ALAN/BONNIE STOKES
RLS-4
ALAN STOKES VS.

CONTINUED AMENDED MOTION FOR
RELIEF FROM AUTOMATIC STAY AND
AMENDED MOTION TO SELL
10-1-14 [140]

Final ruling:

This is the debtors' motion for an order approving a short sale of real property. The hearing on the motion was continued to this date to permit the moving parties to serve all creditors in the case, as required by Fed. R. Bankr. P. 2002(a)(2). In its ruling to continue the hearing, the court cautioned the moving parties that they would need to serve all creditors at the addresses required in accordance with Fed. R. Bankr. P. 2002(g)(1) and (2). The moving parties failed to do that. Specifically, with a single exception; namely, the secured creditor who was served with the motion originally, the moving parties failed to serve any of the creditors who have filed claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g)(1).

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

16. 14-90456-D-13 EDWARD/ANGELA SPEAR
RLF-2

MOTION TO AVOID LIEN OF TD BANK
USA, N.A. AND TARGET NATIONAL
BANK
9-30-14 [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. 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.

17. 14-91156-D-13 TRISTAN BATES OBJECTION TO CONFIRMATION OF
APN-1 PLAN BY CAPITAL ONE AUTO
FINANCE
9-30-14 [20]

18. 13-90160-D-13 THOMAS/AIMEE FERRY MOTION TO MODIFY PLAN
BPC-2 9-18-14 [66]

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. 11-93266-D-13 JESSE/ROSA GONZALES MOTION TO MODIFY PLAN
CJY-3 9-12-14 [68]

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. 14-91069-D-13 CHRISTOPHER/ANGELA MOTION TO VALUE COLLATERAL OF
RLF-1 MAYFIELD GREENPOINT MORTGAGE FUNDING,
INC.
9-30-14 [22]

Final ruling:

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

21. 12-91671-D-13 BOB/CANDI CRAWFORD MOTION TO MODIFY PLAN
DCJ-5 9-16-14 [74]

22. 14-90971-D-13 BRUCE/CASEY SNIDER MOTION FOR RELIEF FROM
TRM-54 AUTOMATIC STAY AND/OR MOTION
HILTON RESORTS CORPORATION FOR ADEQUATE PROTECTION
VS. 9-16-14 [28]

Final ruling:

This matter is resolved without oral argument. This is Hilton Resorts Corporation's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the moving party's interest is not adequately protected. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

23. 11-91975-D-13 MICHAEL/CHRISTINE AYRES MOTION TO MODIFY PLAN
CJY-1 9-19-14 [53]

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.

24. 11-91180-D-13 LUCAS/REBECCA YANEZ MOTION TO MODIFY PLAN
CJY-3 9-12-14 [63]

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.

25. 10-92582-D-13 AGNES DURGUN MOTION TO MODIFY PLAN
JTN-5 9-19-14 [77]

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.

26. 12-90383-D-13 KIJANA BLACK MOTION TO MODIFY PLAN
PLG-1 9-4-14 [40]

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.

27. 14-90722-D-13 MICHAEL/JANEEN OWEN CONTINUED MOTION TO CONFIRM
BP-3 PLAN
8-29-14 [41]

28. 14-91145-D-13 MARTHA KOPIEJ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-3-14 [46]

29. 14-91154-D-13 JAMES/BRENDA COOK
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSEL D. GREER
10-3-14 [15]

30. 09-94155-D-13 PAUL/KIMBERLY GRIEGO
PBG-1

MOTION TO VALUE COLLATERAL OF
PATELCO CREDIT UNION
10-7-14 [82]

Tentative ruling:

This motion is identical to a motion filed by the debtors on May 18, 2010 (DN 53). The following is the court's ruling on the May 18, 2010 motion:

This is the debtors' second attempt to value this claim. The first was denied because they had failed to prove that either (1) the debt was incurred more than 910 days prior, (2) the loan was not a purchase-money loan, or (3) the vehicle was not acquired for personal use.

This time around, they acknowledge that the debt was incurred in March 2008, well within the 910-day period, but they testify they purchased the vehicle primarily for business use. This bald allegation, made under oath, does not appear to be supported by the record. Mr. Griego is a truck driver for a company, TJS, and Ms. Griego is a receiving clerk at Walmart. The debtors' schedules and statement of financial affairs, also signed under oath, do not indicate the debtors have a business.

Civil Minutes for DC No. TBC-5, DN 58.

With this third attempt, the debtors have included no additional evidence to support the conclusion that the vehicle was purchased for business use. Their declaration is exactly the same as their declaration in support of the second motion: "The truck was purchased in March of 2008 primarily for business use." The statement is still conclusory, and it is still contradicted by the evidence of the debtors' schedules and statement of financial affairs.

For the same reason the second motion was denied, this third motion will be denied with prejudice. The court will hear the matter.

31. 12-91159-D-13 EDWARD/JUDY ENOS MOTION TO INCUR DEBT O.S.T.
JAD-3 10-15-14 [62]
32. 11-93263-D-13 ELVA RODRIGUEZ MOTION TO VALUE COLLATERAL OF
CJY-2 JP MORGAN CHASE BANK, N.A.
10-8-14 [35]
33. 13-90204-D-13 LEONARDO/JESUSA MOTION TO SELL
CJY-6 MANGROBANG 10-7-14 [123]