

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

November 14, 2017 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.

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|----|---------------|-------------------------|-----------------------|
| 1. | 15-90515-D-13 | EDWARD RAMIREZ AND LEAH | MOTION TO MODIFY PLAN |
| | BSH-9 | CUEVAS RAMIREZ | 9-24-17 [105] |

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|----|---------------|---------------|------------------------|
| 2. | 17-90624-D-13 | MICHELE HALES | MOTION TO CONFIRM PLAN |
| | MJD-1 | | 9-27-17 [20] |

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.

3. 17-90539-D-13 EDUARDO ROCHA
MSN-1

MOTION TO CONFIRM PLAN
9-14-17 [31]

Tentative ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The debtor listed "Cap1/bstby" on his Schedule E/F as the holder of the second largest unsecured claim in the case, but without an address; thus, this creditor was not served.

Further, because the creditor was listed on the debtor's master address list without an address, the creditor has never received notice of the case. When creditors do not receive notice of a case, questions may arise down the line about the dischargeability of the debt. Thus, it is not only required by applicable rules, it is also to the debtor's benefit that all creditors receive notice. It appears the creditor here is Capital One Bank on account of a Best Buy card; thus, it should be an easy matter to locate a last known address. The court will consider continuing the hearing to permit the debtor to amend the master address list and to serve the moving papers on this creditor; otherwise, the motion will be denied.

The court will hear the matter.

4. 16-91140-D-13 JAMES ENOS
JAD-1

MOTION TO MODIFY PLAN
10-9-17 [32]

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.

5. 11-92649-D-13 HUMBERTO/MARTHA MORENO
16-9014
MORENO ET AL V. DBI FUND
HOLDINGS, LLC ET AL

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
10-19-17 [95]

6. 17-90652-D-13 MERCEDES HOLLOWAY
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-16-17 [26]

7. 17-90654-D-13 MARIO/NORMA MAGANA
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-16-17 [19]

8. 17-90460-D-13 SANTIAGO/GODELEVA
TOG-2 GUTIERREZ

MOTION TO VALUE COLLATERAL OF
TOYOTA MOTOR CREDIT CORPORATION
10-11-17 [45]

Tentative ruling:

This is the debtors' motion to value collateral of Toyota Motor Credit Corporation ("Toyota"); namely, a 2011 Toyota Camry (the "vehicle"). Toyota has filed opposition. For the following reason, the court intends to deny the motion.

The motion is supported by the declaration of debtor Santiago Gutierrez, who testifies, "I believe the replacement value is \$5,729 i.e., a retail merchant would sell this vehicle for the above amount based on the age and condition of said vehicle." Debtor's Declaration, DN 47, ¶ 4. In contrast, Toyota has submitted an NADA Used Car Guide printout for a similar vehicle showing, after application of an adjustment for the mileage claimed by the debtors, a clean retail value of \$11,800. Given that value, and with no explanation of the discrepancy between it and the debtors' lower valuation, the court concludes the debtors have failed to meet their burden of proving that the replacement value of the vehicle is \$5,729 and the motion will be denied.

The court will hear the matter.

9. 17-90564-D-13 DANIEL/GERARDEE DONNAN MOTION TO CONFIRM PLAN
JAD-1 9-26-17 [15]

10. 16-90965-D-13 JESSIE/PATRICIA SANTOS MOTION TO MODIFY PLAN
JAD-2 9-27-17 [56]

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. 17-90472-D-13 CONSUELO ORTEGA MOTION TO VALUE COLLATERAL OF
TOG-3 SANTANDER CONSUMER USA, INC.
10-11-17 [66]

Tentative ruling:

This is the debtor's motion to value collateral of Santander Consumer USA Inc. ("Santander"); namely, a 2007 Acura MDX (the "vehicle"). Santander has filed opposition. For the following reason, the court intends to deny the motion.

This is the debtor's second bite at the same apple, yet the evidence she has submitted this time accomplishes nothing but to raise questions about her credibility. In support of her first motion, the debtor testified, "I believe the replacement value is \$6,237 i.e., a retail merchant would sell this vehicle for the above amount based on the age and condition of said vehicle." Debtor's Decl., filed June 28, 2017, ¶ 4. Santander submitted an NADA Used Car Guide printout for a similar vehicle showing, after application of an adjustment for the mileage claimed by the debtor, a retail value of \$14,075. The court ruled, "Given that value, and with no explanation of the discrepancy between it and the debtor's lower valuation, the court concludes the debtor has failed to meet her burden of proving that the replacement value of the vehicle is \$6,237 and the motion will be denied." In the alternative, the court indicated it would grant the motion in part and value the vehicle at \$14,075.

With this new motion, the debtor testifies, "I believe the replacement value is \$8,527 i.e., a retail merchant would sell this vehicle for the above amount based on the age and condition of said vehicle." Debtor's Decl., filed Oct. 11, 2017, ¶ 4. The debtor offers no other evidence and no explanation as to why she now believes

the value of the vehicle is \$2,290 higher than she originally believed. Santander has again had to file opposition. The debtor's behavior suggests she is trying to negotiate with Santander, but through court intervention rather than out of court. The court again concludes the debtor has failed to meet her burden of proof and the court will deny the motion.

The court will hear the matter.

12. 17-90695-D-13 DEREK/JULIA DAVIS MOTION TO VALUE COLLATERAL OF
JAD-1 TRAVIS CREDIT UNION
10-16-17 [21]

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.

13. 17-90695-D-13 DEREK/JULIA DAVIS OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-16-17 [18]

14. 17-90698-D-13 JUDY HELTSLEY OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
10-16-17 [13]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

15. 17-90714-D-13 FRANCISCO BORGES OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
10-23-17 [22]
16. 15-91106-D-13 BARBARA BALLI MOTION TO REFINANCE
MLP-4 10-26-17 [78]
17. 17-90713-D-13 BRANDY DURKEE OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
10-23-17 [22]
18. 17-90731-D-13 CHARLOTTE LOCKARD OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
10-23-17 [27]

19. 16-90251-D-13 SILVINO/DANAMARIE BARBOZA CONTINUED MOTION TO MODIFY PLAN
DRJ-2 8-3-17 [30]

20. 16-90251-D-13 SILVINO/DANAMARIE BARBOZA CONTINUED MOTION TO BORROW
DRJ-3 9-14-17 [40]