

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 17, 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.

1.	15-00203-D-0 RCH-1	OPUS WEST CORPORATION	CONTINUED ORDER ON MOTION FOR EXAMINATION 10-13-16 [11]
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CLOSED: 12/07/2015

2.	16-24610-D-13 TOG-3	ARMANDO COVARRUBIAS	CONTINUED MOTION TO VALUE COLLATERAL OF BMO HARRIS BANK, N.A. 11-11-16 [65]
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3. 16-22212-D-13 KATINA UMPIERRE
PGM-3

MOTION TO CONFIRM PLAN
11-23-16 [95]

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.

4. 16-27112-D-13 ROSA/PABLO AHUMADA
RTA-1

MOTION TO CONFIRM PLAN
12-2-16 [33]

Tentative ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties failed to serve the IRS and the Franchise Tax Board at their addresses on the Roster of Governmental Agencies, as required by LBR 2002-1; (2) the moving parties failed to serve three other creditors on their Schedule E/F at all; thus, they failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b); and (3) the moving parties failed to serve the party listed on Schedule G at all. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes a party to an executory contract or unexpired lease with the debtor.

The court will hear the matter.

5. 16-20617-D-13 CHARLES/ANNA MCKINLEY
MC-2

MOTION TO MODIFY PLAN
12-1-16 [54]

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.

6. 16-27717-D-13 PAMELA BECKER
PPR-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
12-8-16 [14]

7. 16-21519-D-13 BENNY/LUCY YERRO
CJY-3

MOTION TO MODIFY PLAN
12-12-16 [31]

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.

8. 11-46221-D-13 SHELLEY ADAMS
CJY-3

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK
12-21-16 [52]

9. 15-25828-D-13 FRED NEELEMAN
PK-4

MOTION TO MODIFY PLAN
11-21-16 [71]

Final ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied for the following reasons: (1) the notice of hearing does not state the location of the courthouse where the hearing will be held, as required by LBR 9014-1(d)(3); and (2) the left side of the PACER matrix attached to the proof of service has been cut off, such that the court cannot verify that creditors were served at their correct addresses. The court could speculate that the matrix the moving party utilized was identical to the matrix as found on PACER on the day it was printed; however, it is a simple matter to be sure the matrix printed out and attached is legible and complete, and the moving party will be held to that standard.

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.	16-25228-D-13 EJV-1	PATRICK WOLRIDGE	MOTION TO CONFIRM PLAN 12-2-16 [35]
11.	14-21631-D-13 HWW-2	MICHAEL/NANNETTE FARIA	CONTINUED MOTION TO MODIFY PLAN 6-30-16 [71]
12.	14-21631-D-13 HWW-4	MICHAEL/NANNETTE FARIA	CONTINUED OBJECTION TO CLAIM OF VENETIAN BRIDGES ASSOCIATION, CLAIM NUMBER 8 8-16-16 [84]
13.	14-21631-D-13 HWW-5	MICHAEL/NANNETTE FARIA	CONTINUED OBJECTION TO CLAIM OF BAYVIEW LOAN SERVICING LLC, CLAIM NUMBER 2 8-16-16 [89]

14. 16-26239-D-13 DEREK BURGESS

MOTION TO CONFIRM PLAN
11-30-16 [39]

Final ruling:

This case was dismissed on December 1, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

15. 16-26642-D-13 MARGARITA COVINGTON

MOTION TO CONFIRM PLAN
12-9-16 [52]

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) the moving party gave only 39 days' notice of the hearing rather than 42 days', as required by LBR 3015-1(d)(1) and applicable rules; (2) the moving papers do not include a docket control number, as required by LBR 9014-1(c); (3) the notice of motion and motion are a single document, contrary to LBR 9014-1(d)(3); (4) the supporting declaration and proof of service are attached to the notice of motion and motion, rather than being filed separately, as required by the court's Revised Guidelines for the Preparation of Documents (EDC 2-901) and LBR 9004-1(a); and (5) the moving party filed with the notice of motion and motion (and declaration and proof of service) a separate document called "Notice of Chapter 13 Plan and Opportunity to Object to Plan," which provides instructions for the filing of objections to confirmation that are contrary to the instructions in the notice of motion and motion for the filing of opposition to the motion. Further, the notice of opportunity for hearing procedure is not appropriate in connection with a motion to confirm an amended chapter 13 plan. See LBR 9014-1(k)(1) and 3015-1(d)(1).

Sixth, the proofs of service (one attached to the notice of motion and motion and one attached to the notice of opportunity for hearing) are not signed under oath, as required by 28 U.S.C. 1746. Seventh, the proofs of service state that service was made either "via electronic means as listed on the Court's ECF noticing system" or by first class mail as addressed below. Although the court's local rules provide for service by electronic means, they do not permit the parties to rely on the court's ECF noticing system to serve documents. See LBR 7005-1. Finally, the moving party failed to serve two of the three secured creditors listed on her Schedule D and failed to serve the creditor added to her Schedule E/F by amendment filed December 9, 2016; thus, she failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b).

As a result of these procedural defects, the motion will be denied and the court need not reach the issues raised by the trustee and U.S. Bank Trust at this time. The motion will be denied by minute order. No appearance is necessary.

16. 16-27243-D-13 ROBERT/JENNIFER WILLIAMS
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-19-16 [31]

Final ruling:

The motion will be denied as moot. The debtors filed an amended plan on January 7, 2017, making this objection moot. As a result the court will overrule the objection as moot by minute order. No appearance is necessary.

17. 14-28148-D-13 CESAR/BETTY DEL ROSARIO MOTION TO MODIFY PLAN
JCK-13 12-1-16 [128]

18. 14-28148-D-13 CESAR/BETTY DEL ROSARIO OBJECTION TO CLAIM OF TRADING
JCK-14 FINANCIAL CREDIT, CLAIM NUMBER
15
12-1-16 [133]

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 issue a minute order sustaining the debtors' objection to claim of Trading Financial Credit, Claim No. 15. No appearance is necessary.

19. 16-27152-D-13 ROBERT/SUSANA ANGELE OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
12-19-16 [22]

Final ruling:

The motion will be denied as moot. The debtors filed an amended plan on January 7, 2017, making this objection moot. As a result the court will overrule the objection as moot by minute order. No appearance is necessary.

20. 16-25353-D-13 MURIAH KENDALL MOTION TO CONFIRM PLAN
SLE-2 11-22-16 [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) the moving party failed to serve the Franchise Tax Board and the U.S. Dept. of Housing and Urban Development at their addresses on the Roster of Governmental Agencies, as required by LBR 2002-1; and (2) the plan provides for the secured claim of the Franchise Tax Board at less than the full amount of the claim, whereas the moving party's motion to value the collateral of the Franchise Tax Board was denied by minute order filed January 3, 2017. Thus, the moving party has failed to comply with LBR 3015-1(j).

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.

21. 15-28557-D-13 TOMAS CARRILLO
JM-2

MOTION TO MODIFY PLAN
11-8-16 [36]

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.

22. 15-20362-D-13 MANUEL/IRENE ALVAREZ
CJY-3

MOTION TO MODIFY PLAN
12-5-16 [64]

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.

23. 16-22063-D-13 RANDY/ROSELYN GAJARDO
MJD-1

MOTION TO CONFIRM PLAN
11-23-16 [55]

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.

24. 16-27063-D-13 GIL/JOANNA BUSS
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-16-16 [14]

25. 15-21770-D-13 SHIRLEY THURMAN
CJY-3

MOTION TO MODIFY PLAN
12-8-16 [57]

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.

26. 16-23770-D-13 ERIK/SYLVIA PATTEN
DEF-2

MOTION TO CONFIRM PLAN
11-14-16 [38]

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.

27. 15-27776-D-13 INGEMAR/JENNIFER TOLENADA
RDW-1
UNCLE CREDIT UNION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
12-20-16 [52]

28. 16-27284-D-13 ROBERT VOLK
MRG-1

OBJECTION TO CONFIRMATION OF
PLAN BY LOANDEPOT.COM, LLC
12-21-16 [22]

29. 16-27284-D-13 ROBERT VOLK
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-19-16 [15]

30. 16-25587-D-13 MARICELA LEON
MMS-2

MOTION TO DISMISS CASE
12-17-16 [49]

Final ruling:

This is the motion of Trojan Capital Investment, LLC to dismiss this chapter 13 case. The debtor has filed opposition. For the following reasons, the hearing will be continued.

The crux of the motion is the moving party's contention that the debtor is unable to confirm a plan. As the debtor has set a hearing on a motion to confirm an amended plan for February 14, 2017, at 10:00 a.m., the court finds it appropriate to continue the hearing on the motion to dismiss to the same date and time. In the meantime, the court finds that service of the motion to dismiss was not sufficient. Although the motion does not cite statutory authority for the dismissal, it is in essence brought under § 1307(c) of the Bankruptcy Code. Pursuant to Fed. R. Bankr. P. 1017(a) (with exceptions not applicable here), a case shall not be dismissed before a hearing on motion as provided in Rule 2002. Rule 2002, in turn, provides for service on all creditors, whereas here, the moving party served only the debtor's attorney, the chapter 13 trustee, and the United States Trustee. Therefore, the moving party shall file a notice of continued hearing and serve it, together with the motion and supporting documents, on all creditors who have filed proofs of claim at the addresses on their proofs of claim and on all creditors who have not filed proofs of claim at the addresses listed for them on the debtor's schedules. The moving party shall also serve the party who has requested special notice in this case at its designated address.

Further, the moving party's original notice of hearing did not comply with the court's local rules in that it states that a party who does not want the court to grant the motion "may" file a written response and "may also" appear at the hearing. That is, the notice reads like an either/or proposition, whereas the applicable rule requires the moving party to state specifically whether or not written opposition must be filed. LBR 9104-1(d)(4). The moving party's notice of continued hearing shall be a notice of hearing pursuant to LBR 9014-1(f)(2) - no written opposition required, and it shall so state.

For the reasons stated, the hearing will be continued to February 14, 2017, at 10:00 a.m. No appearance is necessary on January 17, 2017.

31. 16-26991-D-13 CLAUDIA LEON-VANDERHAVE
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-19-16 [19]

32. 16-26098-D-13 PAUL RODRIGUES
JM-1

MOTION TO CONFIRM PLAN
11-22-16 [15]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons. First, the moving party failed to serve the Franchise Tax Board at its address on the Roster of Governmental Agencies, as required by LBR 2002-1. Second, the moving party failed to serve the party listed on Schedule H as a co-debtor on four of the debtor's debts. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes a co-debtor with the debtor.

Third, the debtor listed on his Schedule F five debts totaling \$38,532 with the creditor name "San Joaquist" and no address. Thus, when this motion was served utilizing the PACER matrix, those creditors were not served. In Part 3 of Schedule F, where the debtor was to list "others to be notified about [his] bankruptcy," such as collection agencies, the debtor listed, for each of those five debts, "Unknown Plaintiff," with no address. As such, the creditors to whom those five debts are owed have never been notified of this case and their claims may not be affected by any discharge the debtor may receive. The debtor has scheduled specific amounts believed to be owed for each of those debts, as well as specific account numbers; it seems reasonable to conclude he would have access to a last known name and address for those creditors, especially if discovering them would require only a search of San Joaquin County court records, which are now available online.

In addition to those five debts, the debtor listed on his Schedule F two debts owed to "San Joaquin County Court (RD)," a debt to "Stocktn Mu," and a debt to "Stockton - San Joaquin Municipal Ct," in amounts totaling \$9,506, all with no addresses. In Part 3, he listed the County of San Joaquin, the State of California, an "Unknown Plaintiff," and "Thomas P. Marcotte," respectively, for those four debts, again with no addresses. As with the five debts discussed above, the debtor is aware of the specific amounts believed to be owed to those four creditors and of specific account numbers, but apparently, not of names or addresses. The court recognizes that debtors sometimes rely on credit reports for the purpose of listing their debts and that such reports sometimes have incomplete information. However, in the event the debtor may, with reasonable diligence, discover the names and addresses of those creditors, or any of them, he must list those names and addresses and provide notice of the bankruptcy filing to those creditors. See Fed. R. Bankr. P. 1007(a)(1). Because he failed to do so, he has failed to serve this motion on

all creditors, as required by Fed. R. Bankr. P. 2002(b), or to explain his failure to do so.

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

33. 12-29222-D-13 KYLE/TRACY TROCHE
PGM-1

CONTINUED MOTION TO APPROVE
LOAN MODIFICATION
11-21-16 [75]

34. 16-28037-D-13 FELIX AJAYI
RPK-1

CONTINUED MOTION TO EXTEND
AUTOMATIC STAY
12-14-16 [9]

Final ruling:

This is the debtor's motion to extend the automatic stay. The hearing was continued to permit the moving party to file an amended proof of service, which he has now done. The court has reviewed the amended proof of service and finds that it adequately demonstrates the motion was properly served. As the motion was granted by a minute order issued following the original hearing, subject to revision if service was not proper, and as the court has now found service to have been proper, the court's original order extending the stay stands and this matter is removed from calendar. No appearance is necessary.

35. 16-26469-D-13 LONEY/MARY TURPIN
TAG-5

MOTION FOR ORDER APPROVING
SHORTSALE OF REAL PROPERTY
12-28-16 [51]

Tentative ruling:

This is the debtors' motion to short-sell certain real property. The court intends to deny the motion for the following reasons: (1) the moving parties gave only 20 days' notice of the hearing rather than 21 days', as required by Fed. R. Bankr. P. 2002(a)(2); and (2) the moving parties failed to serve all creditors, as required by the same rule. They served only the creditors who have filed requests for special notice. They failed to serve any of the creditors who have filed claims in this case, and of those creditors who have not filed claims, they failed to serve one secured creditor, two priority creditors, and the 15 general unsecured creditors listed on the debtors' schedules. Thus, the court will deny the motion, or in the alternative, the court will continue the hearing and require the moving parties to file a notice of continued hearing and to serve it, together with the motion and supporting documents, on all creditors previously omitted from service.

The court will hear the matter.

36. 13-29884-D-13 SCOTT/MONICA NUCKELS
ALB-1

MOTION TO VACATE DISMISSAL OF
CASE
12-28-16 [48]

DEBTOR DISMISSED:

11/17/2016

JOINT DEBTOR DISMISSED:

11/17/2016