

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 26, 2016 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.	15-28600-D-13 RUBEN VALLEJO RDG-3	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 12-18-15 [27]
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Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response has been filed. The objection is supported by the record. The court will issue a minute order sustaining the trustee's objection to debtor's claim of exemption. No appearance is necessary.

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 papers do not include a docket control number, as required by LBR 9014-1(c); (3) if the moving papers were served on December 22, 2015, the day they were filed, the moving party gave only 35 days' notice of the hearing rather than 42 days', as required by LBR 3015-1(d)(1) and applicable rules;¹ and (4) the notice of hearing states only that written opposition should be filed and served in advance of the hearing pursuant to the local rules; it fails to state whether and when written opposition must be filed, the deadline, and the persons who must be served, as required by LBR 9014-1(d)(4), and fails to include the cautionary language required by the same rule.

On January 13, 2016, apparently in response to the trustee's opposition to this motion, the debtor filed a "first amended motion" and notice of hearing purporting "to include the docket control number," and also filed a declaration of the debtor, which again, appears to be in response to the trustee's opposition. The "amended motion" is Item 20 on this calendar. For purposes of this motion - the original motion, the court advises the debtor's counsel that defects in a motion are not appropriately cured by filing an "amended motion" 14 days before the hearing date. Further with respect to this motion, there is still no proof of service on file demonstrating that the original motion and notice of hearing were served at the time the originals were filed. The proof of service of the amended motion and notice of the amended motion demonstrates only that those two documents were served on January 13, 2016, which provided only 14 days' notice of the hearing, far short of the 42 days' required.

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

1 The court notes that on January 13, 2016, long after the date for filing a proof of service in accordance with LBR 9014-1(e)(2), the moving party filed a proof of service. The proof of service purports to show that service was made on December 31, 2015, just 26 days in advance of the hearing date.

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.

4. 15-28717-D-7 GILBERT/LISA ESCALANTE MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
FEDERAL NATIONAL MORTGAGE 12-24-15 [25]
ASSOCIATION VS.

Final ruling:

This case was converted to a case under Chapter 7 on January 4, 2015. As such the hearing on this motion is continued to February 10, 2016 at 10:00 a.m. to allow the moving party to properly serve the newly appointed Chapter 7 trustee. No appearance is necessary on January 26, 2016.

5. 15-26318-D-13 JEFFREY/AMY BROWNING MOTION TO CONFIRM PLAN
SBS-3 12-8-15 [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 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. 15-23828-D-13 SHERYL HUDSON CONTINUED OBJECTION TO NOTICE
WW-3 OF MORTGAGE PAYMENT CHANGE
10-20-15 [91]

7. 13-22641-D-13 THOMAS KAMMERER AND EMMA MOTION TO APPROVE LOAN
RAC-3 SERNA MODIFICATION
12-24-15 [37]

8. 15-25443-D-13 SALVADOR MONTES LEDEZMA MOTION TO CONFIRM PLAN
RNE-8 AND ROSA MONTES 12-7-15 [116]

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. 15-28555-D-13 GERARDO MARTINEZ OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
12-18-15 [20]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response has been filed. The objection is supported by the record. The court will issue a minute order sustaining the trustee's objection to debtor's claim of exemption. No appearance is necessary.

10. 15-26163-D-13 JOHN/ANNETTE PAYAN MOTION TO VALUE COLLATERAL OF
JM-2 VERIPRO SOLUTIONS
11-16-15 [29]

Final ruling:

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

11. 15-26163-D-13 JOHN/ANNETTE PAYAN CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
9-21-15 [17]

12. 15-26963-D-13 SANTIAGO BRAVO GRANADOS MOTION TO VALUE COLLATERAL OF
NFG-2 FCI LENDER SERVICES, INC.
12-20-15 [33]

Final ruling:

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

13. 15-26963-D-13 SANTIAGO BRAVO GRANADOS CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
10-26-15 [20]

14. 15-27278-D-13 PAUL/SHARON WILLIAMS MOTION TO CONFIRM PLAN
MJH-2 12-1-15 [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 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.

15. 12-25179-D-13 LARRY/CARRIE STAMPER MOTION TO MODIFY PLAN
JCK-8 12-22-15 [114]

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.

16. 13-27185-D-13 KEVIN/DINA HVIZDA
RLF-2

MOTION TO MODIFY PLAN
12-5-15 [34]

17. 15-27387-D-13 JOSE/JOSEFINA PALOMINO
DVD-4

MOTION TO CONFIRM PLAN
11-17-15 [43]

18. 15-27695-D-13 BENNETT AFARI
EWG-1

OBJECTION TO CLAIM OF INTERNAL
REVENUE SERVICE, CLAIM NUMBER 1
12-9-15 [18]

Final ruling:

This is the debtor's objection to the claim of the Internal Revenue Service ("IRS"), Claim No. 1. The debtor objected to that portion of the claim that was for the tax years 2012, 2013, and 2014, a total of \$8,250.93. The debtor testified in support of the objection he was not required to file federal income tax returns for those years, and thus, owes nothing for those years. On January 6, 2016, the IRS filed an amended proof of claim in which it removed the taxes and interest included in its original claim for those years, leaving nothing claimed for those years. As a result of the filing of the amended claim, the debtor's objection will be overruled as moot by minute order. No appearance is necessary.

19. 15-27695-D-13 BENNETT AFARI
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
11-23-15 [15]

20. 15-27011-D-13 PAMELA BECKER
MDK-1

MOTION TO CONFIRM PLAN
1-13-16 [65]

Final ruling:

This is the debtor's "amended" motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: the moving party gave only 14 days' notice of the hearing rather than 42 days', as required by LBR 3015-1(d)(1) and applicable rules; (2) the notice of hearing states only that written opposition should be filed and served in advance of the hearing pursuant to the local rules; it fails to state whether and when written opposition must be filed, the deadline, and the persons who must be served, as required by LBR 9014-1(d)(4), and fails to include the cautionary language required by the same rule; (3) the moving party served Carrington Mortgage at an address different from one on Schedule D, contrary to Fed. R. Bankr. P. 2002(g)(2); (4) the moving party served the U.S. Attorney's Office in Los Angeles rather than the one in Sacramento, as required by LBR 2002-1; and (5) the moving party failed to serve the co-debtor listed on her Schedule H. 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 an individual who is a co-debtor with the debtor. Pursuant to Fed. R. Bankr. P. 1007(a)(1), the moving party was required to include that party on her master address list, which she did not do, and pursuant to Fed. R. Bankr. P. 2002(b), was required to give that party notice of this motion.

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

21. 15-27387-D-13 JOSE/JOSEFINA PALOMINO
DVD-3

CONTINUED MOTION TO VALUE
COLLATERAL OF TRINITY FINANCIAL
SERVICES, LLC
10-9-15 [31]

22. 15-28598-D-13 KENNETH/LISA BERRY
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-18-15 [19]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

