

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

February 10, 2015 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.	13-90202-D-13	ERIC/TINA HANSEN	MOTION TO MODIFY PLAN
	CJY-3		12-29-14 [80]

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.

2. 11-94405-D-13 LEONARDO VASQUEZ AND MOTION TO MODIFY PLAN
TOG-17 MARIA MELENDEZ 12-22-14 [154]

3. 12-90413-D-13 MICHAEL/PATRICIA PACHECO MOTION TO MODIFY PLAN
PLG-1 12-31-14 [35]
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. 10-91228-D-13 KIRK/FERNANDA PETERSON MOTION TO APPROVE LOAN
SDM-6 MODIFICATION
Final ruling: 12-30-14 [100]

This is the debtors' motion for approval of a mortgage loan modification. The motion will be denied for the following reasons. First, the notice of hearing does not comply with the court's local rules. The notice states, first, that if you do not want the court to approve the loan modification, or if you want the court to consider your views on the matter, "please note that no party in interest shall be required to file a written opposition and that opposition, if any, shall be presented at the hearing." However, the notice also states, "If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it before the date of the hearing on this motion. You must also mail a copy of any written and filed response to the Debtors' attorney . . . as well as [the trustee and the United States Trustee]." Notice of Hearing, filed Dec. 30, 2014, at 2:2-10. The notice concludes with this admonition: "If you or your attorney do not take these steps, the Court may decide that you do not oppose this action and may grant the Motion, in some circumstances without even conducting an actual hearing." Id. at 2:11-13. The steps described in the notice regarding the mailing of written opposition are not required by the local rules for a motion brought under LBR 9014-1(f)(2), and the admonition that the court may grant the motion "without even conducting an actual hearing" is plainly inaccurate. These directions and admonition may well have discouraged potential respondents from appearing at the hearing, and should not have been included in the notice.

Second, the proof of service does not adequately state the manner of service, stating only that the documents were placed in sealed envelopes, with postage pre-paid, addressed as listed below. There is no evidence the envelopes were then deposited into the U.S. Mail or otherwise served.

Finally, the moving party failed to serve the U.S. Dept. of Education at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b). As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

5. 14-90628-D-13 DAVID/KARYN GARCIA

SSA-6

MOTION TO CONFIRM PLAN

12-18-14 [82]

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. 14-91034-D-13 THOMAS/RENEE SMITH

LBG-1

CONTINUED MOTION TO CONFIRM
PLAN

11-5-14 [27]

Tentative ruling:

This is the debtors' motion to confirm a first amended chapter 13 plan. The trustee and Wells Fargo Bank filed opposition to the motion, and a hearing was held on December 23, 2014, as noticed by the debtors. The debtors appeared at that hearing; their attorney did not. The court continued the hearing to this date and ordered the debtors' attorney to appear at the continued hearing. The minute order continuing the hearing and ordering the debtors' attorney to appear was served on the debtors and their attorney on December 26, 2014.

On January 5, 2015, the debtors filed a second amended chapter 13 plan and a motion to confirm it, which they set for hearing on February 24, 2015. With two exceptions, the second amended plan is identical to the first amended plan. The exceptions are that (1) the debtors have now included a monthly dividend for attorney's fees; and (2) they now propose to increase their plan payment by \$300 per month for the last 48 months of the plan term. In the motion and supporting declaration, the debtors explain that at the trustee's demand, they will stop paying child support when their child turns 18, despite the fact that the joint debtor had promised her former spouse she would pay child support until the child turns 22. The debtors complain that this arrangement "will break the understood agreement between [the joint debtor] and her ex-husband and may risk other legal obligations." Debtors' Decl., filed Jan. 5, 2015, at 2:7-9.

This explanation addresses one and maybe two of the objections the trustee raised in opposition to the debtors' first amended plan, the plan that is the subject of the present motion. The debtors have failed to address at least three of the trustee's other objections to the first amended plan, including that (1) the debtors' Form 22C lists the joint debtor's gross income as \$1,833 per month less than the amount shown on her pay stubs; (2) according to the trustee's calculations, the debtors are overwithholding by almost 40% over the amounts required; and (3) the plan fails to provide for the claim of Wells Fargo Bank secured by a real property the debtors failed to list on their schedules. The trustee noted in his opposition to this motion that he had raised the first two of those points in his objection to the debtors' original plan, but the debtors had failed to address those concerns. With their second amended plan, set for hearing on February 24, 2015, the debtors have for the third time failed to address those issues. Wells Fargo Bank also filed opposition to the present motion on the ground that the plan fails to provide for the ongoing mortgage payment on the unscheduled property or for the pre-petition arrears due on the mortgage. The debtors' second amended plan again fails to

provide for the ongoing mortgage payment or the arrears, and the moving papers in support of that plan do not mention the issue.

It appears the Bank's opposition may be misplaced - the note and deed of trust filed with its proof of claim are signed by Thomas Smith and Kellie Broughton Smith, husband and wife, whereas the debtors in this case are Thomas Smith and Renee Lucille Smith. However, the debtors should, at the very least, have taken the trouble to respond to the trustee's and the Bank's concerns in this regard. In any event, the debtors' failure to respond to the issues of their apparent significant understatement of the joint debtor's income and their apparent significant overwithholding, while proposing a third plan on virtually the same terms as the first two, is unacceptable. Absent a credible explanation at the continued hearing, the court will conclude that neither the first nor the second amended plan has been proposed in good faith, deny this motion to confirm the first amended plan, deny the motion to confirm the second amended plan in advance of the hearing, and remove the hearing on that plan from the February 24, 2015 calendar. The court also intends to issue an order to show cause why this case should not be dismissed pursuant to § 1307(c)(1) of the Bankruptcy Code for unreasonable delay that is prejudicial to creditors.

The court will hear the matter.

7.	14-90845-D-13	NORA AMBRIZ AND ALEJANDRO	MOTION TO CONFIRM PLAN
	SAC-7	ORDONEZ	12-22-14 [101]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The trustee has filed opposition on the ground that the plan fails to provide for the claim secured by a second deed of trust on the debtors' rental property at 625 Josilane, Modesto, California. The trustee raised this same objection in opposition to an earlier plan; in response, the debtors stated: "Debtors' Plan provides for Creditor WELLS FARGO BANK, N.A.'s secured claim with regard to Debtors' real property at 625 Josilane, Modesto, CA 95351. See Docket Report No. 82 [specifically, see § 2.09(d)(B)(1)]." Debtors' Response, filed Dec. 5, 2014, at 2:1-3. The problem is that the current plan at the cited section, like the earlier plan, provides for the first deed of trust on the Josilane property, but not the second. This is clear from the fact that the plan lists the amount of the claim at \$240,963, whereas the debtors' Schedule D and amended Schedule D both list a "first mortgage" against the Josilane property, at \$240,963, and a "second mortgage" against the same property, at \$45,897. The current plan, like the earlier plan, provides for the first but not the second. Further, although the debtors have obtained an order valuing the amount of the claim secured by the first, they have failed to obtain an order valuing the claim secured by the second, as required by LBR 3015-1(j).

The court notes also that the moving parties served the creditor filing Claim Nos. 1, 2, and 3 in this case at an incomplete address; that is, using only a portion of the internal mail code included in the address listed on the proof of claim as the address for notice. Thus, the moving parties failed to comply with Fed. R. Bankr. P. 2002(g).

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

8. 14-91451-D-13 KAL/DEBORAH KIRKLE OBJECTION TO DEBTORS' CLAIM OF
RDG-2 EXEMPTIONS
12-19-14 [28]

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 the debtors' claim of exemptions. No appearance is necessary.

9. 14-90657-D-13 KATRINA CHANDLER MOTION TO MODIFY PLAN
SJS-2 12-22-14 [59]

Final ruling:

This case was dismissed on January 5, 2015. As a result the motion will be denied by minute order as moot. No appearance is necessary.

10. 14-90657-D-13 KATRINA CHANDLER OBJECTION TO CLAIM OF THE
SJS-4 FRANCHISE TAX BOARD, CLAIM
NUMBER 12
12-19-14 [54]

Final ruling:

This case was dismissed on January 5, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

11. 14-91563-D-13 MANUEL/LUCIA PARTIDA OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
1-9-15 [16]

12. 14-91564-D-13 THOMAS LUTTERMAN
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-9-15 [32]

Final ruling:

This case was dismissed on January 27, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

13. 14-90967-D-13 DERYL/VIVIAN RATLIFF
SDM-1

CONTINUED MOTION TO CONFIRM
PLAN
10-21-14 [25]

14. 14-91569-D-13 SCOTT ADLER
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-9-15 [15]

Final ruling:

This case was dismissed on January 27, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

15. 14-91679-D-13 AARON/LORNA BAISCH
EAT-1

MOTION TO VALUE COLLATERAL OF
WELLS FARGO
1-6-15 [10]

Final ruling:

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

16. 14-91596-D-13 TIMOTHY BROWN
DEF-2

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
1-9-15 [29]

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.

17. 10-93504-D-13 SCARLETT VON EICHEL
DBR-1
LESLEE FENNELL VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
1-16-15 [89]

18. 12-91007-D-13 RICHARD/JAMIE RICKER
CJY-6

MOTION TO INCUR DEBT
1-27-15 [102]

19. 14-91621-D-13 DONNIE/TAMMIE CREACH
KRO-1
KENNETH WATKINS VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-27-15 [31]

Final ruling:

This case was dismissed on January 27, 2015. As a result the motion will be denied by minute order as moot. No appearance is necessary.

20.	12-91422-D-13 CJY-4	DANIEL GARCIA	MOTION TO APPROVE LOAN MODIFICATION 1-16-15 [61]
21.	09-93535-D-13 CJY-6	ANDRE/DENICE RANDOLPH	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 1-16-15 [88]
22.	10-90077-D-13 CJY-2	KEITH/PAMLA ESPINDOLA	MOTION TO SELL 1-19-15 [37]
23.	11-90278-D-13 DN-2	OFELIA JACQUEZ	CONTINUED MOTION TO MODIFY PLAN 12-11-14 [75]