

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

April 3, 2018 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.	17-91002-D-13	HUMBERTO/MARIA MENDOZA	MOTION TO CONFIRM PLAN
	TOG-1		2-9-18 [18]

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.

2. 17-90823-D-13 JOSEPH/LISA ROBERTSON MOTION TO CONFIRM PLAN
PLG-3 2-8-18 [40]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

3. 18-90023-D-13 JOSEPH SHAW AND MARY OBJECTION TO DEBTORS' CLAIM OF
RDG-2 INDERBITZIN-SHAW EXEMPTIONS
2-26-18 [32]

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 debtors' claim of exemptions. No appearance is necessary.

4. 17-90731-D-13 CHARLOTTE LOCKARD MOTION TO CONFIRM PLAN
MCC-10 2-16-18 [61]

5. 14-91539-D-13 HEATHER POLETE MOTION TO MODIFY PLAN
MSN-4 2-13-18 [76]

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. 15-90249-D-13 THERESA TOWNES
MSN-3

MOTION TO MODIFY PLAN
2-23-18 [87]

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.

7. 15-90854-D-13 DAVID/SHELLY GRACE
MSN-1

MOTION TO MODIFY PLAN
2-13-18 [39]

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. 17-90954-D-13 DENNIS/BARBARA RILEY
MSN-2

MOTION TO CONFIRM PLAN
2-6-18 [27]

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.

9. 16-90160-D-13 ISAAC GUZMAN
MSN-3

CONTINUED MOTION TO MODIFY PLAN
1-5-18 [77]

Tentative ruling:

This is the debtors' objection to that portion of the claim of Bayview Loan Servicing, LLC ("Bayview"), Claim No. 8 on the court's claims register, that is on account of pre-petition fees in the amount of \$6,605.75. The debtors contend the documents attached to Bayview's proof of claim are not sufficient to show what the fees were for (the debtors are correct) and that Bayview's breakdown provided at the request of the debtors' attorney is also insufficient. The debtors ask that Bayview be required to provide a revised accounting or, in the alternative, that the pre-petition fees portion of the claim be reduced to \$600. Bayview responds that the breakdown it provided to the debtors' counsel "is a very detailed itemization" and "[Bayview] is unsure how it could provide a more clear breakdown of the fees to satisfy Debtors' demands." Bayview's Opp., DN 71 ("Opp."), at 5:7-9.

The court agrees with Bayview the breakdown is clear in the sense that it includes by category and date the various amounts making up the \$6,605.75 total. The court agrees with the debtors' objection, however, that portions of the fees appear unreasonable. The court finds as an initial matter that the category Bayview calls "conversion balances" renders the entire accounting suspect. The absence of any admissible evidence supporting the accounting renders the accounting of little value.

The accounting is comprised of the following categories of charges, listed, within each category, by date: charges totaling \$820.60 in NSF fees and late charges, \$9,153.90 in "foreclosure attorney's fees/costs," \$225 in broker's price opinion fees, and \$544.50 in property inspection fees, for a total of \$10,744. From that amount Bayview has deducted a total of \$4,138.25 in what it calls "conversion balance credits" to arrive at a revised total of \$6,605.75 in pre-petition fees. Bayview's explanation is this:

[The conversion balances are] "credits being given to the Debtors. The "conversion balance credits" consist of credits that were applied to Debtors' loan as a result of the September 2013 loan modification given to the Debtors. As some of the fees listed in the Pre-Petition Fees Breakdown occurred before the loan modification, and since the loan modification accounted for those fees, [Bayview] issued "internal" credits effectively offsetting the pre-loan modification charges.

Opp. at 7:4-9.

The explanation is confusing in itself, but even more so when viewed in light of the "conversion balance" dates and amounts themselves. For example, although the loan modification was done in September of 2013, there are credits for charges made or credits given as early as November of 2011 and as late as June 9, 2016 and for amounts ranging from \$1.11 to \$999.99. (The court cannot determine whether the dates listed were the dates the amounts were charged or the dates the credits were given. Either way, the dates make no sense.) There is even a credit of \$121.00 on November 9, 2011 following a charge of \$121.00 on August 2, 2011. That is, in what is supposed to be a category of credits, there is actually a charge. There is no correspondence between any of the amounts in the "Conversion Balances" category and the amounts in the other categories - NSF fees and late charges, attorney's fees,

and so on. How can a lender expect a borrower or a court to have any confidence in its accountings when it applies unexplained "conversion balance credits" for charges incurred or credits given long before and long after the loan modification was done - the loan modification that apparently necessitated the credits in the first place?

Next, the "foreclosure attorney's fees/costs" total - \$9,153.90 - is excessive. The debtors object that, of that total, a total of \$3,151.80 was on account of charges dated post-petition. Bayview responds that the fees were incurred pre-petition but paid by Bayview to its attorneys post-petition; thus, in Bayview's view, they are properly included in the pre-petition fees. Thus, for those four entries - the ones dated post-petition, Bayview's breakdown includes the words "incurred pre-petition." Words in a breakdown are, however, not evidence and there is no evidence to support Bayview's conclusion that those fees were incurred pre-petition. Further, the amounts allegedly paid post-petition do not match any of the pre-petition charges listed. Finally, there is no evidence that would allow the court to conclude that a total of \$9,153.90 in pre-petition attorney's fees for a single foreclosure proceeding is reasonable. There are no time sheets to indicate who performed the services, at what hourly rates, or, perhaps most fundamentally, what services were performed. In short, there is no evidence to support the reasonableness of attorney's fees in any amount, as opposed to ordinary foreclosure costs.

The court also finds that a "property inspection fee" of \$11.00 or \$11.50 almost every month beginning in May of 2012, and sometimes twice a month, is not reasonable. At that amount, the "inspection" must have been nothing more than a drive-by and the court finds it difficult to imagine the circumstances that would have necessitated a simple drive-by at that frequency.

For the reasons stated, the court concludes that the lack of admissible evidence and the "conversion balance credits" cast doubt on the entire accounting; the "foreclosure attorney's fees/costs" are unreasonably high; and the property inspection fees are unreasonably high. The late charges appear to be reasonable and are permitted by the promissory note attached to Bayview's proof of claim, although the only mention of insufficient funds checks the court can find is in the deed of trust, which provides that if a check is returned unpaid, the lender may require future payments to be made by cash, money order, or cashier's check. There is no mention of an agreement to pay NSF fees. However, given the uncertainty created by the "conversion balances," the court is not prepared to allow any particular amounts as late charges, NSF fees, attorney's fees and costs, property inspection fees, or BPO fees. Accordingly, the court will sustain the objection and disallow the pre-petition fees portion of the claim in any amount over and above \$600 - the amount the debtors do not object to. The court will hear the matter.

11. 17-90869-D-13 KAY PARKER
RDG-4

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
2-26-18 [60]

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 exemptions. No appearance is necessary.

12. 17-90871-D-13 MANUEL OLIVARES AND MOTION TO CONFIRM PLAN
TOG-4 AGRIPINA YEPEZ 2-12-18 [60]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The moving parties failed to serve Adriana Olivares, listed on Schedule H as a co-debtor of the debtors. 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 parties who are co-debtors on debts of the debtor. In addition, the debtors have failed to comply with Fed. R. Bankr. P. 1007(a)(1), which requires debtors to include on their master address list the names and addresses of all parties included or to be included on their schedules, including Schedule H. The court notes the debtors did not provide an address for their co-debtor, but they have also not testified that, after reasonable diligence, they are unable to locate an address for her.

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

13. 15-90079-D-13 TIMOTHY LEHMAN AND MOTION TO MODIFY PLAN
JAD-2 EARLENE RANDALL 2-14-18 [50]

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.

14. 17-90479-D-13 JOSEPHINE GOMEZ MOTION TO CONFIRM PLAN
PBG-1 2-19-18 [55]

15. 17-90784-D-13 KENNETH KELLEY MOTION TO CONFIRM PLAN
PBG-1 2-18-18 [35]

16. 17-90794-D-13 RUBEN ALVAREZ
PLG-3

MOTION TO CONFIRM PLAN
2-7-18 [49]

Final ruling:

This is the debtor's motion to confirm a third amended chapter 13 plan. On March 23, 2018, the debtor filed a fourth amended plan and a motion to confirm it. As a result of the filing of the fourth amended plan, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

17. 16-90415-D-13 KYLE WATKINS
MSN-4

MOTION TO SELL
3-19-18 [48]