

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

April 21, 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.	15-90102-D-13	MATTHEW HAGERTY	OBJECTION TO CONFIRMATION OF
	RDG-2		PLAN BY RUSSELL D. GREER
			3-20-15 [48]

Final ruling:

This case was dismissed on April 2, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

2.	14-91205-D-13	DAVID MCMAHON	MOTION TO CONFIRM PLAN
	JMW-2		3-6-15 [37]

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.

3. 14-91206-D-13 NICHOLIS CROWE MOTION TO CONFIRM PLAN
JMW-2 3-6-15 [40]

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. 14-91510-D-13 DIANE MORROW CONTINUED AMENDED MOTION TO
DDM-3 CONVERT CHAPTER 13 TO CHAPTER
11 CASE
4-7-15 [71]

5. 11-90511-D-13 ARTHUR/KATHERINE MARTIN CONTINUED MOTION TO MODIFY PLAN
DCJ-2 2-10-15 [49]

6. 10-90219-D-13 TIMOTHY/DONNA YADRON MOTION TO MODIFY PLAN
JDP-2 3-17-15 [69]

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.

7. 10-94321-D-13 SIMONE FRANK MOTION TO MODIFY PLAN
JDP-2 3-17-15 [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 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.

8. 10-94321-D-13 SIMONE FRANK MOTION TO TRANSFER 2010 NISSAN
JDP-4 CUBE WAGON
3-18-15 [52]

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 to transfer 2010 Nissan Cube Wagon is supported by the record. As such the court will grant the motion to transfer 2010 Nissan Cube Wagon. Moving party is to submit an appropriate order. No appearance is necessary.

9. 13-90824-D-13 MATTHEW/CHARLENE GOMEZ MOTION TO MODIFY PLAN
JCK-3 3-5-15 [57]

10. 10-91425-D-13 ROBERT/VANESSA PEREZ MOTION TO MODIFY PLAN
JDP-1 3-10-15 [42]

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.

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The trustee and Wells Fargo Bank have filed opposition. For the following reasons, the motion will be denied.

First, the moving parties utilized a PACER matrix printed over three months before the date of service; as a result, they failed to serve the creditors filing Claim Nos. 25, 26, and 28 at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g).

The motion will be denied for the following additional independent reason. This is the fourth plan the debtors have proposed in this case since it was filed, in July of 2014. The trustee opposed the first three on the ground, among others, that the debtors were overwithholding by significant amounts. Although the debtors responded initially that this issue should be revisited after their plan has been effect until 2016, the trustee continued to object on that basis, and the debtors continued to propose plans based on the same withholdings. Finally, after the court had sustained the trustee's objection to the first plan and denied motions to confirm the second and third plans, the debtors filed an amended Schedule I showing they have reduced their withholdings substantially.

However, rather than allowing the benefit of that reduction to accrue to their creditors, the debtors at the same time began making a voluntary contribution of \$403 per month to debtor Thomas Smith's retirement plan. The trustee opposes the present motion on the ground, among others, that the \$403 voluntary contribution is not reasonably necessary for the debtors' support. The court agrees. The court follows the decision of the Ninth Circuit Bankruptcy Appellate Panel in Parks v. Drummond (In re Parks), 475 B.R. 703, 709 (9th Cir. BAP 2012), on this issue. Further, it appears the debtors began making the contribution only after the trustee had objected repeatedly to their overwithholding and the court had repeatedly agreed with the trustee's position. In these circumstances, the court views the debtors' decision to begin making this contribution as not having been made in good faith.

The trustee also opposes this motion on the ground that the plan is not proposed in good faith because, although the plan calls for a 100% dividend to general unsecured creditors, it proposes to pay those creditors much more slowly than the debtors could afford. Specifically, the plan proposes four payments at \$2,500 each, then 12 payments at \$2,570 each, and finally, 44 payments at \$3,200 each, whereas the debtors' monthly net income (that is, their income after deduction of all withholdings and all living expenses) is \$3,945 per month. The trustee notes that the liquidation test does not require the debtors to pay a 100% dividend; thus, their proposal to pay creditors more slowly than they could afford leaves the creditors at risk of subsequent negative developments. Again, the court agrees. The debtors' original plan in this case proposed a dividend of only 51%, while the debtors were overwithholding substantially - a situation that would have benefitted the debtors at the expense of their creditors. Further, their original plan did not propose to increase their plan payment when their 401(k) loan is paid off, just six months into the case, and the debtors did not amend their plan to increase their plan payment until after the trustee objected. While continuing their significant overwithholdings, the debtors then proposed two more plans that would have paid a

dividend of just 60%. Apparently, it was not until the debtors finally became convinced the trustee would continue to object to their withholdings and the court would continue to sustain those objections that the debtors finally adjusted their withholdings and proposed a 100% plan. And whereas the adjustment resulted in a \$1,436 increase in their income after payroll deductions and in their monthly net income, they have proposed to increase their plan payment by only \$200. And finally, under the proposed plan, even that nominal increase will not begin until the 17th month of the plan; that is, in January of next year.

The court concludes that the debtors have repeatedly sought to confirm a plan in this case that would unfairly benefit the debtors at the expense of their creditors. As a result, the court finds that creditors are at significant risk of future plan modifications by which the debtors would seek to reduce the dividend, and the fact that the plan is a 100% plan is insufficient to allow the court to conclude that it has been proposed in good faith.

For the reasons stated, the court concludes that the plan has not been proposed in good faith, and the motion will be denied. The motion will be denied by minute order. No appearance is necessary.

12. 14-91337-D-13 LUIS/SONIA DELGADO MOTION TO CONFIRM PLAN
CSL-4 2-22-15 [49]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties utilized a PACER matrix printed on November 20, 2014, three months before service was made, and as a result, failed to serve several creditors who have filed claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g).

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

1
13. 13-90544-D-13 JOSEPH/RAEHEL BAIROS OBJECTION TO CLAIM OF NCI
CJY-2 GROUP, INC., CLAIM NUMBER 8-2
2-27-15 [44]

Tentative ruling:

This is the debtors' objection to the claim of NCI Group Inc. dba Heritage Building Systems (the "Claimant"). The debtors object to the claim on the basis that the Claimant obtained an abstract of judgment on September 26, 2011 against the debtors, and that, at the time the debtors filed this case, they did not own any real property. In the debtors' view, "[t]herefore the Claimant does not have any real property to secure its lien to." Obj. at 1:24-25. The debtors request the claim be treated as a general unsecured claim.

The only evidence submitted by the debtors in support of the objection are copies of the Claimant's default judgment, its abstract of judgment, and the debtors' Schedule A filed in this case. The Claimant recorded its abstract of judgment on December 31, 2012, in Stanislaus County. Thus, the question is whether

the debtors owned any real property on Stanislaus County on that day. If they did, the Claimant has a lien on that property that attached that day at the time the abstract was recorded. The debtors did not file this case until March 22, 2013; thus, their Schedule A is evidence only that they did not own real property on March 22, 2013.

The debtors having failed to submit any evidence to demonstrate they owned no real property in Stanislaus County at the time the Claimant's abstract was recorded, they have failed to overcome the prima facie validity of the proof of claim (Fed. R. Bankr. P. 3001(f)), and the objection will be overruled. Alternatively, the court will continue the hearing to allow the debtors to file a supplemental declaration address the above defect.

The court will hear the matter.

14.	12-90045-D-13	WILLIAM JOHNSON AND	MOTION TO VALUE COLLATERAL OF
	CJY-2	CAROLINE BRYANT-JOHNSON	GREEN TREE SERVICING, LLC
			3-26-15 [49]

15.	14-91156-D-13	TRISTAN BATES	MOTION TO CONFIRM PLAN
	BSH-3		2-25-15 [58]

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.	13-90357-D-13	ROBERT/DIANE ROSE	MOTION TO MODIFY PLAN
	CSL-5		2-22-15 [74]

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.

17. 14-90760-D-13 SCOTT/MICHELLE HORTON
CJY-2

OBJECTION TO CLAIM OF BANK OF
THE WEST, CLAIM NUMBER 5-1
2-23-15 [27]

Final ruling:

This is the debtors' objection to the claim of Bank of the West (the "Bank"), Claim No. 5 on the court's claims register. On March 16, 2015, the Bank filed withdrew the claim. As a result of the withdrawal of the claim, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

18. 14-90760-D-13 SCOTT/MICHELLE HORTON
CJY-4

MOTION TO MODIFY PLAN
3-13-15 [40]

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.

19. 15-90060-D-13 TROY/DEBORAH EDWARDS
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-20-15 [17]

20. 14-91662-D-13 RAUL/ANA VELA
SDM-3

MOTION TO CONFIRM PLAN
3-11-15 [33]

Final ruling:

This is the debtors' motion to confirm a chapter 13 plan. The motion will be denied for the following reasons: (1) the moving papers state repeatedly that the debtors seek to confirm a first modified plan dated December 29, 2014, whereas the plan filed with the motion is dated March 10, 2015 and was filed March 11, 2015; and (2) the plan proposes to pay \$0 on two deeds of trust against the debtors' residence, whereas the court has entered an order valuing the collateral securing only one of those claims; thus, the moving parties have failed to comply with LBR 3015-1(j).

For the reasons stated, the motion will be denied and the court need not reach the remaining issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

21. 10-92668-D-13 MICHAEL/JOSEFINA GORMAN MOTION TO MODIFY PLAN
PGM-2 3-12-15 [88]

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.

22. 12-90271-D-13 WILLY FARIAS MOTION TO APPROVE LOAN
TOG-2 MODIFICATION
3-2-15 [85]

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 to approve loan modification is supported by the record. As such the court will grant the motion to approve loan modification by minute order. No appearance is necessary.

23. 12-90271-D-13 WILLY FARIAS MOTION TO MODIFY PLAN
TOG-3 3-2-15 [91]

24. 12-92273-D-13 DEBBIE DEAN MOTION TO MODIFY PLAN
DEF-10 2-24-15 [132]

25. 15-90073-D-13 RAYMOND STARK
RDG-1
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-20-15 [19]
26. 09-93579-D-13 GEORGE/MONICA GIVARGIS
CJY-2
MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
3-25-15 [149]
27. 15-90079-D-13 TIMOTHY LEHMAN AND
RDG-1 EARLENE RANDALL
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-20-15 [14]
28. 11-92083-D-13 JOHN/RITA PADILLA
CJY-3
MOTION TO MODIFY PLAN
3-17-15 [49]

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.

29. 14-91599-D-13 CHERYL ROSS-HOLMES MOTION TO CONFIRM PLAN
JAD-1 2-25-15 [23]

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.

30. 11-92924-D-13 GARY GERVASE CONTINUED MOTION FOR HARDSHIP
BSH-3 DISCHARGE
3-9-15 [35]

31. 15-90028-D-13 RAFAEL REYNA MOTION TO VALUE COLLATERAL OF
MLP-1 RESIDENTIAL CREDIT SOLUTIONS,
INC.
3-28-15 [47]

32. 10-91569-D-13 ROBERT/SUZANNE BASHAW MOTION TO VALUE COLLATERAL OF
DCJ-1 U.S. BANK, N.A.
4-7-15 [41]

33. 10-90084-D-13 RAMSIN/ANITA OVRAHIM MOTION TO VALUE COLLATERAL OF
JDP-1 U.S. BANK, N.A.
3-31-15 [59]

34. 12-91489-D-13 KEVIN/BARBARA PARSONS MOTION TO SELL
CJY-6 3-31-15 [95]