

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

August 8, 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.	16-90600-D-13 BSH-3	VALERIE AVITIA	MOTION TO MODIFY PLAN 6-26-17 [103]
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2.	17-90409-D-13 RDG-1	JOHNATHAN MOHR	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 7-10-17 [22]
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3. 17-90412-D-13 KAL KIRKLE
RDG-2
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-10-17 [37]
4. 17-90429-D-13 KELLY/DONNA FUHRER
RDG-2
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-10-17 [19]
5. 17-90529-D-13 GABRIELLA LARA
MDE-1
THE SDS FAMILY TRUST DATED
JUNE 5, 2013 VS.
MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-7-17 [18]
6. 15-90638-D-13 LINDA KEMPPAINEN
TJS-1
MOTION TO ALLOW LATE PROOF OF
CLAIM
7-3-17 [39]

Tentative ruling:

This is the motion of M&T Bank (the "Bank") for allowance of a late claim. The debtor has filed a response. For the following reason, the motion will be denied.

The Bank seeks allowance of its claim for pre-petition arrears, filed late on March 10, 2017. The Bank contends the filing of the proof of claim was delayed "because of several changes in lenders and services since the FDIC took over the loan in 2008 and conveyed it to JP Morgan Chase Bank." Bank's Motion, DN 39, at 2:12-13. The Bank adds that if the claim is not allowed, the arrears will still be

due at the close of the case, the debtor will still need to pay them, and the Bank might be entitled to proceed with its foreclosure due to the default. In the alternative, the Bank seeks relief from stay based upon non-payment of the arrears.

The debtor responds that when the Notice of Filed Claims revealed the Bank had failed to file a timely proof of claim, the debtor filed one on its behalf. A review of the debtor's proof of claim indicates it was timely filed, in accordance with LBR 3004-1, and the amount of the pre-petition arrears set forth in the proof of claim exceeds the amount claimed by the Bank in its late-filed proof of claim. Although the Bank's claim does not indicate it amends the debtor's timely claim, the court believes it might reasonably be construed as an amended claim and the amount of the arrears due might reasonably be viewed as the lower amount included in the Bank's proof of claim. In any event, as a result of the debtor's filing of the claim on behalf of the Bank, the Bank's motion for allowance of its late claim is unnecessary and will be denied as such. The court will hear the matter.

7. 17-90340-D-13 LEO/NIA BARRAGAN
TOG-1

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
6-12-17 [16]

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.

8. 14-91541-D-13 KEVIN/LANELLE RUIZ
PGM-1

MOTION TO MODIFY PLAN
6-27-17 [43]

9. 17-90442-D-13 ALAN/SABRINA THOMPSON
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-10-17 [20]

10. 17-90442-D-13 ALAN/SABRINA THOMPSON
RLF-1

MOTION TO VALUE COLLATERAL OF
TRAVIS CREDIT UNION
7-7-17 [16]

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.

11. 17-90143-D-13 HELIODORO/MIRIAM MACIAS
TOG-2

MOTION TO CONFIRM PLAN
6-19-17 [29]

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.

12. 17-90144-D-13 DONNA MASON
PBG-1

MOTION TO CONFIRM PLAN
6-20-17 [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.

13. 17-90145-D-13 NICOLE MORADKHANIAN
JAD-1

MOTION TO CONFIRM PLAN
6-26-17 [83]

14. 14-90654-D-13 ANGEL/TABATHA GARCIA
LRR-7

MOTION TO MODIFY PLAN
6-15-17 [96]

15. 17-90459-D-13 JOSE/ENRIQUETA VALDOVINOS
TOG-1

MOTION TO VALUE COLLATERAL OF
ALLY BANK
6-30-17 [13]

Tentative ruling:

This is the debtors' motion to value collateral of Ally Bank (the "Bank"); namely, a 2013 Buick Lacrosse (the "vehicle"). The Bank has filed opposition. For the following reason, the court intends to deny the motion. In the alternative, the court will grant the motion in part and value the Bank's collateral at the value asserted by the Bank.

The motion is supported by the declaration of debtor Jose Valdovinos, who testifies, "I believe the replacement value is \$11,810 i.e., a retail merchant would sell this vehicle for the above amount based on the age and condition of said vehicle." Debtor's Declaration, DN 15, at 2:2-4. In contrast, the Bank has submitted an NADA Used Car Guide printout for a similar vehicle showing, after application of an adjustment for the mileage claimed by the debtors, a clean retail value of \$13,075. Given that value, and with no explanation of the discrepancy between it and the debtors' lower valuation, the court concludes the debtors have failed to meet their burden of proving that the replacement value of the vehicle is \$11,810 and the motion will be denied. In the alternative, the court will grant the motion in part and value the vehicle at \$13,075.

The court will hear the matter.

16. 10-93070-D-13 SANDRA PRICE
GW-2

CONTINUED MOTION TO AVOID LIEN
OF TRADE ASSOCIATION, INC.
5-16-17 [93]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that the only opposition to the motion has been withdrawn and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

17. 17-90472-D-13 CONSUELO ORTEGA
TOG-1

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA, INC.
6-28-17 [16]

Tentative ruling:

This is the debtor's motion to value collateral of Santander Consumer USA Inc. ("Santander"); namely, a 2007 Acura MDX (the "vehicle"). Santander has filed opposition. For the following reason, the court intends to deny the motion. In the alternative, the court will grant the motion in part and value Santander's collateral at the value asserted by Santander.

The motion is supported by the declaration of the debtor, who testifies, "I believe the replacement value is \$6,237 i.e., a retail merchant would sell this vehicle for the above amount based on the age and condition of said vehicle." Debtor's Declaration, DN 18, at 2:2-4. In contrast, Santander has submitted an NADA Used Car Guide printout for a similar vehicle showing, after application of an adjustment for the mileage claimed by the debtor, a retail value of \$14,075. Given that value, and with no explanation of the discrepancy between it and the debtor's lower valuation, the court concludes the debtor has failed to meet her burden of proving that the replacement value of the vehicle is \$6,237 and the motion will be denied. In the alternative, the court will grant the motion in part and value the vehicle at \$14,075.

The court will hear the matter.

18. 17-90389-D-13 SEAN AMIN
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-26-17 [19]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.