

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

September 9, 2014 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.	12-34901-D-13	JOHN/RACHEL CADIZ	MOTION TO MODIFY PLAN
	DN-3		7-22-14 [52]

2.	14-23903-D-13	JOHN/ANA GONSALES	MOTION TO CONFIRM PLAN
	JCB-1		7-25-14 [28]

3. 11-94405-D-13 LEONARDO VASQUEZ AND MOTION TO MODIFY PLAN
TOG-11 MARIA MELENDEZ 7-30-14 [114]

Final ruling:

This case is assigned to the Modesto Division of this court. The motion, notice of hearing, declaration, and exhibits all give the location of the hearing as the Modesto courthouse; however, the matter was set for a hearing date on which the court is hearing cases assigned to the Sacramento Division. As a result of this scheduling and notice defect, the motion will be denied, and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

4. 13-22206-D-13 JANINE SUTTI CONTINUED MOTION TO MODIFY PLAN
WW-2 5-6-14 [43]

5. 14-25008-D-13 NHAT NGUYEN MOTION TO AVOID LIEN OF
JTN-4 FINANCIAL PACIFIC LEASING LLC
7-24-14 [74]

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. 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.

6. 14-25008-D-13 NHAT NGUYEN MOTION TO AVOID LIEN OF
JTN-5 PORTFOLIO RECOVERY ASSOCIATES
LLC
7-24-14 [79]

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. 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.

7. 14-26310-D-13 TRISHA JANEWAY
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-11-14 [16]

8. 14-26714-D-13 JOSE/DORA CERVANTES
TOG-1

MOTION TO VALUE COLLATERAL OF
OCWEN LOAN SERVICING, LLC
7-29-14 [13]

Final ruling:

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

9. 10-43522-D-13 BRIAN BEERMANN
DN-2

MOTION TO MODIFY PLAN
7-24-14 [43]

10. 14-25423-D-13 PATRICIA FRENCH
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
7-11-14 [16]

11. 14-23424-D-13 CARL JUBB
SJS-3

MOTION TO CONFIRM PLAN
8-4-14 [58]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party gave only 36 days' notice of the hearing, rather than 42 days', as required by LBR 3015-1(d)(1) and applicable rules. As a result of this notice defect, the motion will be denied, and the court need not reach the issue raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

12. 12-24126-D-13 JUAN GUTIERREZ
CJY-3

MOTION TO MODIFY PLAN
7-18-14 [51]

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.

13. 14-26628-D-13 DALE/YVONNE WILD
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-11-14 [23]

14. 10-27041-D-13 EDDIE/NENITA PALOMARES
RWF-6

MOTION TO INCUR DEBT
8-6-14 [99]

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 incur debt is supported by the record. As such the court will grant the motion to incur debt by minute order. No appearance is necessary.

15. 14-23842-D-13 ANGELA WARREN-BASS
JCK-3

CONTINUED MOTION TO CONFIRM
PLAN
6-20-14 [42]

16. 10-50043-D-13 SALVADOR/MARIA VALENCIA
MOT-2

MOTION TO VALUE COLLATERAL OF
HOUSEHOLD FINANCE COMPANY
7-31-14 [35]

Final ruling:

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

17. 14-23543-D-13 DAVID GREENE
JCB-1

MOTION TO CONFIRM PLAN
7-25-14 [47]

18. 12-23550-D-13 KATHLEEN HARRIS
RAS-1

MOTION TO MODIFY PLAN
7-14-14 [72]

Tentative ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The trustee has filed opposition. For the following reasons, the court intends to deny the motion.

The trustee opposed the motion on the grounds that: (1) the plan has not been proposed in good faith because, according to the motion, the debtor has recently entered into a loan modification for her mortgage, whereas she has not filed a motion for approval of that modification; and (2) the plan may not be proposed in

good faith for the additional reason that the debtor had failed to file amended Schedules I and J to show how the loan modification has affected or would affect her budget.

On August 25, 2014, apparently in response to the trustee's opposition, the debtor filed an amended Schedule J on which she listed her mortgage payment as \$975 lower than on her Schedule J filed two years ago, on July 6, 2012. She also increased her other expenses by \$572 over the expenses listed two years ago. On the amended Schedule J, she also shows her income as lower by \$400 than it was two years ago, thus offsetting the entire amount of the mortgage savings. However, she did not file an amended Schedule I to show how the decrease in income was derived. She has filed no declaration explaining these significant changes which, in combination, result in the debtor retaining for herself all of the very significant savings she has enjoyed and will enjoy as a result of the loan modification.

In addition, on August 25, 2014, the debtor filed an amended Schedule D on which she simply dropped a \$53,791 second mortgage that had been listed on her original Schedule D. There is no explanation as to why she has dropped that debt from her Schedule D.

In light of these significant unexplained changes in the debtor's circumstances, and in light of her failure to obtain court approval of the loan modification, the court concludes that the debtor has failed to meet her burden of demonstrating that the plan has been proposed in good faith, and the motion will be denied.

The court will hear the matter.

19. 14-25852-D-13 AUTUMN TINNEY
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
7-28-14 [16]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. On August 4, 2014, the debtor filed an amended Schedule C. As a result of the filing of the amended Schedule C, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

20. 12-39153-D-13 CHANTAE JACKSON
JCK-4

MOTION TO MODIFY PLAN
7-29-14 [56]

21. 14-22158-D-13 JOANNE MCREYNOLDS
PGM-1

MOTION TO CONFIRM PLAN
7-21-14 [34]

22. 10-52762-D-13 RICHARD CAIN
DN-5

MOTION TO MODIFY PLAN
7-28-14 [88]

23. 14-26468-D-13 ALICE HATTON
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-12-14 [25]

24. 14-26570-D-13 CATHERINE GRIFFIN
HWW-2

MOTION TO VALUE COLLATERAL OF
AMERICREDIT FINANCIAL SERVICES,
INC.
8-11-14 [39]

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.

25. 14-26570-D-13 CATHERINE GRIFFIN
HWW-3

MOTION TO VALUE COLLATERAL OF
SPRINGLEAF FUNDING TRUST 2013-B
SPRINGLEAF FINANCIAL SERVICES,
INC.
8-12-14 [44]

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.

26. 14-26570-D-13 CATHERINE GRIFFIN
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-11-14 [33]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

27. 14-26371-D-13 VICTOR/VICKI CHAO
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-11-14 [23]

28. 12-26983-D-13 FRANK DAY
LRR-2

MOTION TO APPROVE REVERSE
MORTGAGE
8-1-14 [42]

29. 12-26983-D-13 FRANK DAY
LRR-4

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
8-1-14 [52]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Capital One Bank (USA), N.A. (the "Bank"). The motion will be denied because the moving party failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Bank by first-class mail at a post office box address, with no attention line, whereas an FDIC-insured institution, such as the Bank, must be served by certified mail to the attention of an officer. Rule 7004(h).

The court notes also that applying the formula set forth in § 522(f)(2)(A) of the Bankruptcy Code to the figures set forth in the motion and on the debtor's schedules, there is equity in the property of \$750 over and above the sum of the judicial lien, all other liens, and the amount of the exemption the debtor has claimed in the property. Thus, that portion of the judicial lien that is over the amount of \$750 impairs the debtor's exemption; however, to the extent of \$750, the lien does not impair the exemption. In other words, even if the Bank had been properly served, the court would be in a position to grant the motion only in part.

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

30. 12-28185-D-13 ANTOINETTA TREISS
ICE-2

MOTION FOR COMPENSATION FOR
IRMA EDMONDS, CHAPTER 7
TRUSTEE(S)
8-8-14 [130]

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 for compensation for Irma Edmonds, Chapter 7 Trustee is supported by the record. As such the court will grant the motion for compensation for Irma Edmonds, Chapter 7 Trustee and allow the fee as an administrative expense. Moving party is to submit an appropriate order. No appearance is necessary.

31. 10-35186-D-13 CONNIE CARRIER
DN-6

CONTINUED MOTION TO MODIFY PLAN
6-13-14 [89]

32. 10-35186-D-13 CONNIE CARRIER CONTINUED MOTION TO VALUE
DN-7 COLLATERAL OF INTERNAL REVENUE
SERVICE
7-8-14 [98]

33. 14-26596-D-13 JEREMY HECHT OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL GREER
8-12-14 [23]

Final ruling:

This case was dismissed on August 18, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

34. 14-26628-D-13 DALE/YVONNE WILD MOTION TO VALUE COLLATERAL OF
BSH-1 CITIMORTGAGE, INC.
8-26-14 [26]

35. 14-26628-D-13 DALE/YVONNE WILD MOTION TO VALUE COLLATERAL OF
BSH-2 DELL FINANCIAL SERVICES
8-26-14 [31]

36. 14-26232-D-13 ADAM/SANDRA LEIGHTON

OBJECTION TO CONFIRMATION OF
PLAN BY GUILD MORTGAGE COMPANY
8-13-14 [36]

37. 14-20141-D-13 JUAN/ELIZABETH MENDEZ
LR-4

CONTINUED MOTION TO CONFIRM
PLAN
5-22-14 [73]

38. 14-28592-D-13 JAMES/LEI BAIDOO
MC-1

MOTION TO EXTEND AUTOMATIC STAY
8-25-14 [8]

Tentative ruling:

This is the debtors' motion to extend the automatic stay pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The moving parties failed to serve Cort Co., listed on their Schedule G as the debtors' lessor under a month-to-month commercial lease. Thus, in the event the motion is granted, the extension of the automatic stay will not apply to Cort Co. (Given the broad definitions of "creditor" and "claim" in § 101(5) and (10) of the Bankruptcy Code, Cort Co. is a creditor of the debtors. For that reason, and also by virtue of the plain language of Fed. R. Bankr. P. 1007(a)(1), the debtors were required to list the name and address of Cort Co. on their master address list, which they also failed to do.)

The court will hear the matter.

39. 14-28196-D-13 SINNATHA KEOMANIVONG
DN-1

MOTION TO EXTEND AUTOMATIC STAY
8-15-14 [9]