

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

September 12, 2017 at 10:00 a.m.

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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.

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1.	16-28104-D-13	STANLEY/KATHRINE ASBURY	MOTION TO MODIFY PLAN
	GSJ-3		8-4-17 [48]

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. 17-24123-D-13 ROBERT/OFELIA STUART  
MJH-1

CONTINUED MOTION TO VALUE  
COLLATERAL OF TRUST ONE  
MORTGAGE CORPORATION  
6-26-17 [8]

**Tentative ruling:**

This is the debtors' motion to value collateral of Trust One Mortgage Corporation; namely, a second deed of trust against the debtors' residence. Park Tree Investments, LLC ("Park Tree"), as the current holder of the note and deed of trust, filed opposition and the hearing was continued to permit Park Tree to obtain an appraisal, which it has done. For the following reasons, the motion will be denied.

The debtors testify the property is a single-family residence with two bedrooms and one bath, comprising 840 square feet. They state the property has a market value of no more than \$130,000 and is subject to a first deed of trust on which \$135,457 is owed. Park Tree, on the other hand, submitted the declaration of Jim Nishimura, a licensed real estate appraiser with 14 years of experience, who testifies he personally inspected the interior and exterior of the residence and prepared his appraisal report in August of this year. His appraisal report indicates he evaluated four comparable sales and one comparable listing. Mr. Nishimura states it is his professional conclusion that, as of June 22, 2017 (the petition date in this case), the fair market value of the property was \$231,000. Given Mr. Nishimura's experience as a real estate appraiser, the court gives his valuation considerably more weight than the debtors', who appear to have no qualifications to appraise real property. Accordingly, the court finds the value of the property to be \$231,000. At that value, there is more than enough value in the property to fully secure Park Tree's deed of trust. (According to the debtors, Park Tree is owed \$23,336.)

Accordingly, the court concludes the debtors have failed to meet their burden of proving that the value of the property is less than the amount owed on the first deed of trust, and the motion will be denied.

The court will hear the matter.

3. 17-22729-D-13 KULDIP SANDHU  
HRH-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY BMO  
HARRIS BANK, N.A.  
6-28-17 [55]

**Final ruling:**

**Objection withdrawn by moving party. Matter removed from calendar.**

4. 17-22729-D-13 KULDIP SANDHU  
HWW-5

CONTINUED MOTION TO VALUE  
COLLATERAL OF BMO HARRIS BANK,  
N.A.  
7-2-17 [67]

**Final ruling:**

This motion was resolved by stipulated order entered August 17, 2017. Matter removed from calendar.

5. 17-22729-D-13 KULDIP SANDHU CONTINUED OBJECTION TO  
RDG-1 CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
6-26-17 [52]

6. 12-33932-D-13 PATRICIA FLYNN MOTION TO MODIFY PLAN  
JCK-5 8-3-17 [54]

**Final ruling:**

This is the debtor's motion to confirm a second modified chapter 13 plan. On August 24, 2017, the debtor filed a third modified plan and a motion to confirm it, set for hearing on October 10, 2017. As a result of the filing of the third modified plan, this motion is moot. The motion will be denied as moot by minute order.<sup>1</sup> No appearance is necessary.

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1 The debtor's purported withdrawal of the motion, filed August 24, 2017, was ineffective because the trustee had already filed opposition to the motion. See Fed. R. Civ. P. 41(a)(1) and (2), incorporated herein by Fed. R. Bankr. P. 7041 and 9014(c).

7. 14-28732-D-13 ALFREDO GOMEZ AND MARIA MOTION TO MODIFY PLAN  
ERG-5 PENA 7-26-17 [93]

8. 17-20436-D-13 THEODORE MADZEY TRUSTEE'S FINAL REPORT AND  
ACCOUNT  
6-19-17 [59]

**Tentative ruling:**

This is the objection of creditor Musacchio & Montanari, P.C. (the "Creditor") to "Chapter 13 Trustee[']s Final Report and Account and object[ion] to the proposed discharge of" a stipulated judgment held by the Creditor. The specific relief requested by the Creditor is that " to the extent the Trustees Final Report and Account would result in a discharge of the debt owed to Claimant, that the Report be amended to acknowledge the non-dischargeability of Claimant's claim . . . ." Notice of Objection, DN 63, at 3:2-4. More specifically, "allowance must be made for the payment of this Judgment and/or the recognition of non-dischargeability in said report." Id. at 2:12-13. The judgment referred to is a judgment of the bankruptcy

court for the Northern District of California in favor of the Creditor and against the debtor. The debtor's present case, in this court, has now been dismissed.

The trustee's final report and account has nothing to do with the dischargeability or nondischargeability of any particular debt of the debtor and it is not appropriate that the report "make allowance for the payment of a debt" or for "the recognition of non-dischargeability" of a debt. The only relief requested in the final report is that "a final decree be entered that discharges the trustee and grants such other relief as may be just and proper." Trustee's Final Report and Account, DN 59, ¶ 12. The relief requested by the Creditor is not appropriate and the objection will be overruled.

The court will hear the matter.

9. 15-23544-D-13 FRANCISCO MORA MOTION TO MODIFY PLAN  
OAG-1 8-1-17 [52]
10. 17-22251-D-13 BRIAN GEGARIAN MOTION TO CONFIRM PLAN  
JCK-4 7-27-17 [67]
11. 16-25055-D-13 HANK WALTH MOTION TO CONFIRM PLAN  
HWW-8 7-13-17 [92]

**Tentative ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The trustee has filed opposition. For the following reasons, the motion will be denied.

This case has been pending for over a year without a confirmed plan. The trustee objected to the debtor's first amended plan on the ground it provided for only \$3,500 of the filed secured claim of the Franchise Tax Board ("FTB"), \$49,228. The trustee objected to the debtor's next plan on the ground it provided for only \$3,500 of the FTB's amended \$34,344 secured claim. This time around, the debtor has provided for this claim in the amount of \$7,700 but the claim remains at \$34,344 and the debtor has filed neither an objection to the claim nor a motion to value. It

appears the debtor is simply hoping the FTB will amend its claim again, all the way down to \$7,700. Thus, the plan does not comply with § 1325(a)(5) of the Code and is not feasible. The court also finds that the debtor has failed to satisfy his burden of proving the plan has been proposed in good faith. In short, it appears the debtor has strung this case out for a year with no intention of providing for the full amount of the FTB's claim or of challenging it.

The court will hear the matter.

12. 16-20059-D-13 LEY NGAR MOTION TO MODIFY PLAN  
RWF-5 7-26-17 [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 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. 17-22974-D-13 WILLIAM CRONIN MOTION TO CONFIRM PLAN  
DCJ-1 7-29-17 [39]

**Final ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the plan provides for three secured creditors at less than the full amounts of their claims, whereas the debtor has failed to file motions to value the collateral securing those claims, as required by LBR 3015-1(j). Accordingly, the motion will be denied and the court need not reach the other issues raised by the trustee or the issues raised by the Small Business Administration at this time. The motion will be denied by minute order. No appearance is necessary.

14. 17-23785-D-13 JASWINDER SINGH MOTION TO CONFIRM PLAN  
MJH-1 7-25-17 [18]

15. 17-23786-D-13 KEVIN LAGORIO AND MISTII MOTION TO CONFIRM PLAN  
MJH-2 ROCHA-LAGORIO 7-25-17 [28]

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. On August 30, 2017, the debtors filed a second amended plan and a motion to confirm it, set for hearing on October 10, 2017. As a result of the filing of the second amended plan, this motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

16. 17-22590-D-13 STEPHANIE AIROLA-SANTIAGO MOTION TO CONFIRM PLAN  
CLH-1 7-31-17 [24]

17. 17-21796-D-13 ARMANDO COVARRUBIAS MOTION TO CONFIRM PLAN  
TOG-1 7-18-17 [31]

**Final ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. On August 21, 2017, the trustee filed opposition and on September 5, 2017, the debtor purported to withdraw the motion. Because the trustee had already filed opposition, the debtor's purported withdrawal of the motion was ineffective. See Fed. R. Civ. P. 41(a)(1) and (2), incorporated herein by Fed. R. Bankr. P. 7041 and 9014(c). The court infers from the purported withdrawal, however, that the debtor does not wish to contest the trustee's opposition. Accordingly, the motion will be denied by minute order. No appearance is necessary.

18. 17-24412-D-13 JEANINE DAVIS OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
8-21-17 [25]

19. 17-24412-D-13 JEANINE DAVIS  
SSA-1  
OBJECTION TO CONFIRMATION OF  
PLAN BY THOMAS AND FRANCES  
CASTANEDA FAMILY TRUST DATED  
APRIL 26, 2012  
8-23-17 [29]
20. 17-24123-D-13 ROBERT/OFELIA STUART  
RDG-1  
OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
8-21-17 [25]
21. 17-24226-D-13 EDELMIRO ZUNIGA  
RDG-1  
OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
8-21-17 [22]
22. 17-22627-D-13 GRACIELLA HERNANDEZ  
SCF-2  
CONTINUED MOTION TO CONFIRM  
PLAN  
7-7-17 [47]

**Final ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because, as the trustee points out, the plan provides for a secured creditor at \$0, whereas the debtor's motion to value that creditor's collateral, also on this calendar, is being denied by final ruling. Thus, the debtor has failed to comply with LBR 3015-1(j). Accordingly, the motion will be denied and the court need not reach the other issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

23. 17-22627-D-13 GRACIELLA HERNANDEZ CONTINUED MOTION TO AVOID LIEN  
SCF-3 OF NATIONSTAR  
7-7-17 [53]

**Final ruling:**

This is the debtor's motion to value collateral of Nationstar Mortgage, LLC ("Nationstar"). The hearing was continued to permit the moving party to correct certain service defects, which the moving party has done. However, the notice of continued hearing stated that opposition, if any, shall be in writing and filed and served at least 14 days prior to the date or continued date of the hearing, and that without good cause, no party would be heard in opposition if written opposition had not been timely filed. This type of notice requires that parties be given at least 28 days' notice of the hearing, whereas here, the moving party gave only 14 days' notice of the continued hearing date.

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

24. 17-20829-D-13 ALBERTO DELAROSA AND CONTINUED MOTION TO DISMISS  
RDG-2 ESPERANZA LOREDO CASE  
6-6-17 [83]

25. 17-24443-D-13 CAMRAN ABAWI OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
8-21-17 [18]

**Final ruling:**

This case was converted to a case under Chapter 7 on September 7, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

26. 17-21547-D-13 DAVID JARRETT CONTINUED MOTION TO CONFIRM  
HDR-1 PLAN  
7-10-17 [27]