

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

September 19, 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.	17-90504-D-13	WALTER PINEDA	OBJECTION TO DEBTOR'S CLAIM OF
	RDG-2		EXEMPTIONS
			8-7-17 [29]

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 the debtor's claim of exemption. No appearance is necessary.

2. 16-90415-D-13 KYLE WATKINS
MSN-3

MOTION TO MODIFY PLAN
8-7-17 [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 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.

3. 17-90220-D-13 BRIAN HAYES
SSA-2

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
5-11-17 [33]

Final ruling:

This case was dismissed on June 27, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

4. 12-91523-D-13 RICK/DAWNA HAUSELMANN
DCJ-4

MOTION TO MODIFY PLAN
8-8-17 [67]

5. 17-90026-D-13 AURANGZEB KHAN
FF-3

MOTION TO CONFIRM PLAN
8-8-17 [157]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve Empire Sanitary District, listed on the debtor's Schedule D, and failed to serve at least 10 creditors listed on Schedule E/F; thus, the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b); (2) the notice of hearing does not state the location of the courthouse, as required by LBR 9014-1(d)(3); and (3) the moving party failed to serve the State Board of Equalization at its complete address on the Roster of Governmental Agencies, as required by LBR 2002-1(b).

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

6. 16-90929-D-13 JARED/ALISON KRICK MOTION TO MODIFY PLAN
JAD-1 8-7-17 [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.

7. 17-90031-D-13 JAIME SANCHEZ MOTION TO CONFIRM PLAN
TOG-4 8-4-17 [107]

8. 17-90531-D-13 GERAD SLAYTON OBJECTION TO CONFIRMATION OF
MRG-1 PLAN BY JAIME SLAYTON
8-23-17 [28]

9. 17-90531-D-13 GERAD SLAYTON OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
8-21-17 [22]

10.	17-90539-D-13	EDUARDO ROCHA	OBJECTION TO CONFIRMATION OF
	APN-1		PLAN BY WELLS FARGO BANK, N.A.
			8-22-17 [19]

Final ruling:

The debtor has filed a response indicating an amended plan will be filed. As a result the objection will be sustained by minute order. No appearance is necessary.

11.	17-90539-D-13	EDUARDO ROCHA	OBJECTION TO CONFIRMATION OF
	RDG-2		PLAN BY RUSSELL D. GREER
			8-21-17 [16]

12.	15-90341-D-13	PAMELA LOOPER	MOTION TO MODIFY PLAN
	PGM-2		8-3-17 [49]

13.	16-90251-D-13	SILVINO/DANAMARIE BARBOZA	MOTION TO MODIFY PLAN
	DRJ-2		8-3-17 [30]

14. 16-90951-D-13 CLAUDIA BELL
DEF-3

MOTION TO TURNOVER PROPERTY
7-21-17 [93]

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 directing the Placer County Sheriff to turnover property is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

15. 16-90951-D-13 CLAUDIA BELL
DEF-4

MOTION TO MODIFY PLAN
7-21-17 [85]

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.

16. 17-90554-D-13 JASPAL SINGH
KMR-1

OBJECTION TO CONFIRMATION OF
PLAN BY LAKEVIEW LOAN
SERVICING, LLC
8-17-17 [42]

Final ruling:

The debtor has filed a response indicating an amended plan will be filed. As a result the objection will be sustained by minute order. No appearance is necessary.

17. 17-90554-D-13 JASPAL SINGH
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-21-17 [49]

Final ruling:

The debtor has filed a response indicating an amended plan will be filed. As a result the objection will be sustained by minute order. No appearance is necessary.

18. 17-90558-D-13 DEVYNE COLEMAN
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-21-17 [21]

19. 17-90459-D-13 JOSE/ENRIQUETA VALDOVINOS
TOG-3

MOTION TO VALUE COLLATERAL OF
ALLY BANK
8-14-17 [35]

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.

20. 17-90466-D-13 DAVID/DEANNA ROLLER
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
7-21-17 [19]

21. 17-90466-D-13 DAVID/DEANNA ROLLER
SW-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY ALLY
BANK
7-25-17 [24]

22. 17-90475-D-13 BRIAN BRECKENRIDGE
DCJ-2

MOTION TO CONFIRM PLAN
8-6-17 [25]

23. 17-90388-D-13 JOSE/ROLEA ROY
MLP-1

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
8-28-17 [23]

Tentative ruling:

This is the debtors' motion to avoid a judicial lien held by Capital One Bank (USA), N.A. (the "Bank"). The motion was noticed under 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.

For a judicial lien to be avoidable, it must impair an exemption to which the debtor would otherwise be entitled. § 522(f)(1) of the Bankruptcy Code; In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). To determine whether a lien impairs an exemption, the court applies the formula set forth in § 522(f)(2)(A) and first adds the amounts of the judicial lien, here \$17,721, unavoidable liens, here \$107,442, and the debtors' exemption, here \$75,000, to arrive at a total of \$200,163. A judicial lien impairs an exemption only to the extent that this total exceeds the value the debtors' interest in the property would have in the absence of any liens; in this case, that value, according to the debtors, is \$195,000.¹ The total of the judicial lien, unavoidable liens, and debtors' exemption, \$200,163, exceeds that value, \$195,000, by \$5,163. Thus, the judicial lien may be avoided to the extent of, at most, \$5,163. The balance of the lien, \$12,558, may not be avoided. Viewed another way, deducting the amount of the unavoidable lien, \$107,441, and the amount of the exemption, \$75,000, from the alleged value of the property, \$195,000, leaves \$12,558 in equity to secure the Bank's judicial lien.²

The court will hear the matter.

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- 1 The statute twice makes clear the lien may be avoided only "to the extent that" it impairs the debtors' exemption. See § 522(f)(1) and (2).
 - 2 In fact, the debtors' declaration includes a calculation that recognizes there is \$12,558 in "available equity" after deduction of the amounts of the unavoidable lien and the debtors' exemption.