

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

September 22, 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.	15-25013-D-13	KENNETH/ESTHER BOLING	MOTION TO CONFIRM PLAN
	JCK-1		8-7-15 [18]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

2.	15-24014-D-13	WESLEY OBERMAN	CONTINUED MOTION TO VALUE
	EWG-1		COLLATERAL OF HARLEY-DAVIDSON
			CREDIT CORP.
			7-9-15 [23]

Final ruling:

This case was dismissed on August 21, 2015. As a result the motion will be denied by minute order as moot. No appearance is necessary.

3. 15-24014-D-13 WESLEY OBERMAN MOTION TO CONFIRM PLAN
EWG-2 8-3-15 [35]

Final ruling:

This case was dismissed on August 21, 2015. As a result the motion will be denied by minute order as moot. No appearance is necessary.

4. 15-22228-D-13 SHELDON/ANGIE SMITH MOTION TO CONFIRM PLAN
EWG-1 8-5-15 [47]

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.

5. 14-32330-D-13 MARY-ANNE MALOY OBJECTION TO CLAIM OF TD BANK
JCK-1 USA, N.A., CLAIM NUMBER 7
7-27-15 [16]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection to the claim of Bank USA, Claim No. 7, has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the debtor's objection to claim. No appearance is necessary.

6. 15-22732-D-13 MAGDALENA ALVARADO MOTION TO CONFIRM PLAN
ULC-2 7-27-15 [50]

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.

Tentative ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The trustee has filed opposition. For the following reasons, the motion will be denied.

The court will begin with these observations. First, the trustee objected to the debtors' first four plans filed in this case on the ground, among others, that the plans had not been proposed in good faith. Similarly, the court ruled on all four of those plans that they had not been proposed in good faith.¹ The court has concluded earlier in the case that the debtors repeatedly understated their income, under oath. In addition, the trustee objected to previous plans on the ground that the debtors were proposing to pay significantly less to their creditors than they had the ability to pay, whereas the debtors had testified in summary fashion that they were "paying all of [their] disposable income to [their] creditors to the best of [their] ability." The court views the debtors' testimony in support of the present proposed plan in light of these earlier objections, findings, and conclusions.

In support of the present plan, the debtors testify that "[they] have had several changes/problems . . . which now require [them] to further modify" their plan. Moyers Decl., filed Aug. 17, 2015, at 1:25-26. They cite (1) the inclusion of their stripped-off second mortgage in the total of general unsecured claims, which effectively lowers the dividend to the creditors in that class; and (2) certain changes in their expenses. What they do not mention is that debtor Faron Moyers' gross income has almost doubled - from \$5,902 to \$11,316 per month,² an increase that, as the trustee points out, has been accompanied by a large increase in the amounts being paid toward his 401(k) loan. Whereas he had been paying \$164 per month toward that loan (see amended Schedule I filed April 27, 2013), he now reports he is paying \$545 per month. Mr. Moyers testifies he has two 401(k) loans; he states the first will end in September of 2016 and the second in March of 2019.

According to the trustee's objection to confirmation of the debtors' original plan, the debtors testified at the § 341 meeting that Mr. Moyers' 401(k) loan was due to be paid off in two years. The § 341 meeting was concluded in December of 2012; thus, Mr. Moyers' original 401(k) loan was apparently paid off nine months ago and he has apparently taken out two new loans and incurred a new \$545 per month expense without court approval.

Mrs. Moyers testifies she has a 401(k) loan on which she pays \$259.47 every two weeks; it will be paid off in November of 2016. This is apparently the \$562.19 shown on the debtors' amended Schedule I as an "advance." ($\$259.47 \times 26 \div 12 = \562.19 .) However, the amended Schedule I shows \$53.56 toward repayment of retirement loans - in addition to the \$562.19 "advance," bringing the total Mrs. Moyers pays on her loan to \$615 per month. The November 2016 payoff date is the same as the debtors testified to at the meeting of creditors. The amount of the repayment, however, has increased - from \$321 according to their April 27, 2013 Schedule I to \$615. In other words, together the debtors are paying \$1,160 per month on retirement loans, as opposed to the \$485 they were paying in April of 2013. The debtors have offered no explanation for these increases.

The debtors also report the following increases in other expenses: a \$275 increase in home maintenance; a \$200 increase in electricity, heat, and natural gas; a \$425 increase in food; a \$346 increase in medical and dental; a \$586 increase in charitable contributions; and new expenses of \$287 for pet food and care and \$146 for work travel and food. Thus, the debtors have increased their expenses (not including the 401(k) loan repayments) by \$2,265 per month. The debtors have offered explanations in their supporting declaration. However, as to, at a minimum, the increases in home maintenance, utilities, food, and charitable contributions and the new pet food and care expense, the explanations, when viewed in light of the record in this case, are insufficient. The debtors' explanation of their home maintenance expense is that "[their] house was built in the 70's, so maintenance is much higher." Decl. at 3:22. This might explain why maintenance costs are high; it does not explain why they are \$275 per month higher than they were 17 months ago. The debtors state the house is 3,500 square feet, "which is why the utilities are high." Id. at 3:23-24. Again, this might explain why they are high; it does not explain why they are \$200 higher.

As to food, the explanation is that the debtors' costs fluctuate "due to [their] two children who come in and out of [their] home" (Decl. at 4:15-16), whereas none of the four sets of Schedules I and J the debtors have filed in this case mentions any dependents residing with them. It strongly appears the \$425 per month increase in their food budget was intended solely to offset the very significant increase in income Mr. Moyers has enjoyed. This is what the debtors have to say about their charitable contributions: "Check Register says \$881 last year, but that included funerals, etc. I've included the St. Peter statement that is true, correct and attached as an exhibit. We also added the other items purchased for the church." Decl. at 4:8-11. The "St. Peter statement" is not attached or filed as an exhibit, and the trustee has not seen it. Further, prior to May of 2013, the debtors filed three different Schedules J in this case; on all of them, they listed their charitable contributions at \$160 per month. Their declaration does not begin to explain why they now list their charitable contributions at \$746 per month. As with the food expense, this increase appears to have been made solely to offset the increase in income.

Finally, as to the pet food and care expense, \$287 per month, the debtors state: "could be much higher depending on how much alfalfa I feed the goats. If it doesn't rain and the grass stops growing, I must supplement their food." Decl. at 4:12-14. None of the debtors' three earlier Schedules J lists any expense for pet food and care, and on their original and two amended Schedules B, where required to disclose animals they owned, the debtors answered "None."

To conclude, given (1) the dramatic increase in the debtors' income, coupled with the poorly explained and, so far as the court can determine from the evidence, unjustified increases in their expenses, including their 401(k) loan repayments and their household expenses, resulting in (2) the debtors' proposal to share none of their increased income with their creditors and (3) their proposal to decrease the dividend to general unsecured creditors from 100% to 44%, the court concludes that the plan has not been proposed in good faith. Accordingly, the motion will be denied.

The court will hear the matter.

1 The court confirmed the fourth plan only after a tentative ruling was issued finding the plan had not been proposed in good faith and the debtors agreed to make

a \$50,000 lump-sum payment into the plan the month after the plan was confirmed and to increase the dividend from 31%, as proposed in the plan, to 100%.

2 The only mention of income in the debtors' supporting declaration is this: "I (Faron) have not been receiving my usual bonuses. If I do receive my usual bonuses I pay them into the Chapter 13 Plan." Decl. at 4:20-21.

8. 15-20040-D-13 JUGJEEV/MINERVA MANGAT MOTION TO CONFIRM PLAN
AVN-3 7-31-15 [81]

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.

9. 11-45142-D-13 ELIZABETH LAJOS CONTINUED MOTION FOR RELIEF
AT-1 FROM AUTOMATIC STAY
TRADAN SPRINGS HOMEOWNERS 6-30-15 [154]
ASSOCIATION VS.

10. 15-25443-D-13 SALVADOR MONTES LEDEZMA OBJECTION TO CONFIRMATION OF
RDG-1 AND ROSA MONTES PLAN BY RUSSELL D. GREER
8-24-15 [39]

Final ruling:

This is the trustee's objection to the debtors' original chapter 13 plan. On August 21, 2015, the debtors filed an amended chapter 13 plan. As a result of the filing of the amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

11. 15-25943-D-13 MICHAEL/PHYLLIS MIRANDA
PK-1

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
7-28-15 [8]

Final ruling:

This is the debtors' motion to value collateral of Wells Fargo Bank (the "Bank"). The motion will be denied for the following reasons: (1) the moving papers do not state the location of the courthouse where the hearing is to be held, the name of the judge hearing the motion, or the courtroom in which the hearing will be held, as required by LBR 9014-1(d)(3); and (2) the moving parties 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 parties served the Bank to the attention of an "Officer, Managing or General Agent, or Agent for Service of Process," whereas the rule requires that an FDIC-insured institution, such as the Bank, be served to the attention of an officer and only an officer. Fed. R. Bankr. P. 7004(h).

This distinction is important. For service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, the applicable rule requires service to the attention of an officer, managing or general agent, or agent for service of process (Fed. R. Bankr. P. 7004(b)(3)), whereas service on an FDIC-insured institution must be to the attention of an officer. Fed. R. Bankr. P. 7004(h). If service on an FDIC-insured institution to the attention of an "Officer, Managing or General Agent, or Agent for Service of Process" were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.

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

12. 15-24653-D-13 CHERYL HOWE-ADKINS
RDG-2

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
7-29-15 [24]

13. 15-21854-D-13 CEFERINO/XIOMARA GONZALES
JHW-1
FORD MOTOR CREDIT COMPANY,
LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-21-15 [42]

14. 15-21854-D-13 CEFERINO/XIOMARA GONZALES MOTION TO CONFIRM PLAN
MSM-1 7-29-15 [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.

15. 15-24867-D-13 RICHARD/LISA FOSTER OBJECTION TO DEBTORS' CLAIM OF
RDG-1 EXEMPTIONS
8-11-15 [18]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that the debtors have filed an amended Schedule C. As such, the court will overrule the objection as moot by minute order. No appearance is necessary.

16. 14-30872-D-13 ARMANDO COVARRUBIAS CONTINUED MOTION TO CONFIRM
TOG-7 PLAN
6-3-15 [84]

17. 15-21576-D-13 JEREMY/KAREE HARRISON MOTION TO CONFIRM PLAN
SJS-3 8-10-15 [68]

18. 12-21886-D-13 VINCENT/ANITA VILLALPANDO MOTION TO MODIFY PLAN
JCK-6 8-13-15 [72]

19. 12-24888-D-13 RONALD/SHERYL NOAKES MOTION TO MODIFY PLAN
JCK-1 8-7-15 [36]

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.

20. 14-30191-D-13 RICHARD/JANET BOONE MOTION TO MODIFY PLAN
PK-2 8-11-15 [48]

Final ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties used an out-of-date PACER matrix for service; as a result, they failed to serve several creditors that have filed claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); and (2) the moving papers incorrectly give the location of the hearing as Modesto rather than the Sacramento courthouse. Even if the listing of Modesto were correct, the notice of hearing would still be insufficient as it does not include the address of the courthouse, the name of the judge hearing the motion, or the courtroom in which the hearing will be held, as required by LBR 9014-1(d)(3).

As a result of these service and notice defects, the motion will be denied and the court need not address the issue raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

21. 14-30697-D-13 CAROLE PETERSEN CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
7-21-15 [122]

22. 14-30697-D-13 CAROLE PETERSEN
SSA-6

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY IRMA
EDMONDS
7-16-15 [113]

23. 15-21799-D-13 MIGUEL CERPAS
EJG-2

MOTION TO CONFIRM PLAN
7-29-15 [34]

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.

24. 10-36700-D-13 CRAIG GILMORE
GMW-4

MOTION FOR EXAMINATION AND FOR
PRODUCTION OF DOCUMENTS
9-8-15 [68]

25. 15-24449-D-13 GUADALUPE/JAIME HERNANDEZ
RS-3

MOTION TO VALUE COLLATERAL OF
ONEWEST BANK, N.A. AND/OR
MOTION TO VALUE COLLATERAL OF
CALHFA MORTGAGE ASSISTANCE
CORPORATION
9-8-15 [61]

26. 14-30872-D-13 ARMANDO COVARRUBIAS
HRH-1

GENERAL ELECTRIC CAPITAL
CORP. VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
1-8-15 [26]

27. 15-24887-D-13 SUNNY TAING
BF-5

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
9-8-15 [37]