

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 4, 2016 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.	16-24001 -D-13 RDG-2	ARMANDO/LINDA MARTINEZ	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 8-12-16 [29]
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2.	14-23906 -D-13 PGM-3	JOHN/CATHY RAY	MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY 8-31-16 [53]
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3. [16-23710](#)-D-13 HAROLD/YVONNE SMITH MOTION TO CONFIRM PLAN
JCK-1 8-12-16 [[17](#)]

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.

4. [12-41011](#)-D-13 MARCO/LORENA ALDRETE MOTION TO INCUR DEBT
JCK-1 8-22-16 [[28](#)]

5. [12-41011](#)-D-13 MARCO/LORENA ALDRETE MOTION TO MODIFY PLAN
JCK-2 8-22-16 [[33](#)]

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.

6. [14-29812](#)-D-13 ANDRE COOPER AND KIMBERLY MOTION TO MODIFY PLAN
WMR-1 GILLIAM 8-29-16 [[119](#)]

7. [16-25617](#)-D-13 DOLAN PARKER MOTION FOR RELIEF FROM
ETW-1 AUTOMATIC STAY
REGENT FINANCIAL, LLC VS. 8-30-16 [[8](#)]

Final ruling:

This matter is resolved without oral argument. This is Regent Financial, LLC's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the creditor's interest in property is not adequately protected. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

8. [15-24419](#)-D-13 TYRONE LOWTHER MOTION TO MODIFY PLAN
SJS-2 8-17-16 [[39](#)]

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.

9. [11-46044](#)-D-13 RICKY JONES AND ROSE MOTION TO MODIFY PLAN
CJY-4 RUBIO-JONES 8-17-16 [[95](#)]

10. [16-25149](#)-D-13 THEODORE MADZEY MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 8-31-16 [[24](#)]

11. [16-21452](#)-D-13 MARIO ORTIZ

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
8-29-16 [[63](#)]

Final ruling:

This is an objection by Wells Fargo Bank (the "Bank") to confirmation of the debtor's amended chapter 13 plan. The debtor's motion to confirm the same plan is also on this calendar, Item 12 below, and the Bank's objection to confirmation will be construed as an opposition to that motion. The Bank's counsel should note for future reference that the objection was filed in a format that does not comply with the court's local rules. Under the rules, an objection to confirmation of a plan, accompanied by a notice of hearing, with all documents bearing their own docket control number, is the appropriate manner for objecting to confirmation of a debtor's initial plan filed in a case (assuming the plan was timely filed), whereas the appropriate manner for opposing a debtor's motion to confirm a plan, as was apparently the Bank's intention here, is by opposition bearing the same docket control number as the debtor's motion, and without its own notice of hearing. Compare LBR 3015-1(c)(4) with LBR 3015-1(d)(1) and 9014-1(f). In the interest of fairness, the court will treat the Bank's objection as an opposition to the debtor's motion to confirm the amended plan, Item 12 on this calendar. This matter, Item 11, will be removed from calendar.

12. [16-21452](#)-D-13 MARIO ORTIZ
NFG-1

MOTION TO CONFIRM PLAN
8-10-16 [[59](#)]

Tentative ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. Wells Fargo Bank (the "Bank") has filed opposition and the debtor's counsel has filed a declaration in reply.¹ The parties are drastically far apart in their positions as to the amount of pre-petition arrearages due the Bank. For the following reasons, the court agrees with the debtor's position and intends to grant the motion.

The plan provides for pre-petition arrears due the Bank in the amount of \$10,880.80; the Bank says the arrears total \$221,513.33. The issue turns on whether or not the debtor and the Bank entered into a Home Affordable Modification Agreement back in 2013 or 2014 - the debtor claims he did; the Bank ignores the debtor's contention entirely, standing solely on its conclusory statement that the amount of arrears due is \$221,513.33. The Bank has submitted no evidence and has not filed a proof of claim that might be afforded evidentiary effect under Fed. R. Bankr. P.

3001(f). To be clear, despite having objected to the debtor's original plan in this case and to this amended plan, the Bank has submitted no evidence at all.

The debtor has submitted his own declaration, in which he testifies generally to the confirmation requirements of § 1325(a). The only reference to the Bank's claim is his testimony that "[a]ll secured creditors provided for have either accepted the plan, the property securing their claim is being surrendered, or the plan provides to pay the creditors pursuant to 11 U.S.C. section 1325(a)(5)(B)." Debtor's Decl., DN 61, at ¶ 4. The debtor has also submitted a declaration of his attorney ("Counsel"). The court does not ordinarily consider declarations of a party's attorney because the testimony in them is often not within the attorney's personal knowledge. However, a considerable portion of Counsel's testimony in this case appears to be within his personal knowledge. Counsel begins by reciting the circumstances of a Home Affordable Modification Agreement allegedly entered into in 2013 between the debtor and Ocwen Loan Servicing, LLC ("Ocwen"). (The Bank's opposition to this motion identifies Ocwen as the Bank's servicing agent.) Because Counsel has not demonstrated he has personal knowledge of any of the events alleged to have taken place in 2013, the court will not consider his evidence as to those events.

As to events in and after May of 2014, however, it appears Counsel does have personal knowledge. He states the debtor retained his office in June of 2014 to represent the debtor concerning the loan modification agreement and Counsel began communicating with Ocwen. Counsel states he was stonewalled but was finally informed after several months that Ocwen would not honor the 2013 HAMP modification. Counsel testifies he appealed this decision in October of 2014 to Ocwen's Escalated Case Management Department, which issued a written decision in November of 2014 to honor the modification if the debtor would send \$7,622.16, representing the monthly payments for May through November of 2014 under the terms of the 2013 modification. Counsel states he forwarded that amount to Ocwen on November 25, 2014 and the debtor began making payments of \$1,088.88 in December of 2014.

Counsel states that in April 2015, Ocwen informed the debtor it would not honor the decision of the Escalated Case Management Department because of issues with the debtor's identity - issues that had been addressed in the appeal decision. Counsel concludes, "I have been unsuccessful in my attempts to have Ocwen accept the Modification Appeal decision issued on November 17, 2014 by their Escalated Case Management Department. Debtor's amended Chapter 13 Plan is proposed in good faith and is based on this decision, which Debtor believes is controlling and which binds Ocwen and Wells Fargo Bank." N. Gomez Decl., DN 68, at ¶¶ 18, 19.

Attached to Counsel's declaration is a copy of a Home Affordable Modification Agreement naming the debtor and Victor O. Rivas as borrowers and Ocwen as servicer and pertaining to the property that is the debtor's residence. The agreement is on a pre-printed form; there is no indication or suggestion the agreement was prepared by the debtors or by anyone other than an employee of Ocwen. The agreement bears the notarized signatures of the debtor and Victor O. Rivas; there is no signature block for anyone on behalf of Ocwen or the Bank. The modification agreement refers to monthly payments of \$1,088.08, including an escrow payment, to begin September 1, 2013. Also attached to Counsel's declaration is a copy of a letter dated November 17, 2014 bearing the title "Modification Appeal Review Completed." The letter is on Ocwen's letterhead, is addressed to the debtor and Victor O. Rivas, and is signed by Jaime Taylor, Escalations Agent, Ocwen Loan Servicing, LLC, Escalated Case Management Department. The letter refers to a loan modification appeal to the Escalated Case Management Department made on the borrowers' behalf by Nelson Gomez,

the debtor's counsel in this case. The letter states, "Your loan was approved for a Final Home Affordable Modification Program (HAMP) Tier 1 on 5/6/2013." Debtor's Ex. B, p. 1. The letter refers to problems in 2013 and early 2014 with failure to return the agreement on time, with the signatures on the agreement, and with verification of occupancy.

The letter states plainly, however, the following:

Your identity was confirmed on 3/24/2014 and Making Home Affordable Compliance (MHA-C) cleared the alert. Due to the timeframe it took to clear your Making Home Affordable Compliance (MHA-C) alert, your loan was not modified through the HAMP program. However, Ocwen will honor your Final HAMP modification from 2013 should our office receive the amount of \$7,622.16 for the months of May-November. Once received your loan will reflect due for 12/1/2014 in the amount of \$1,088.88 once your loan is modified.

Debtor's Ex. B, p. 1. The debtor's counsel testifies he forwarded \$7,622.16 to Ocwen on November 25, 2014, eight days after the date of the letter, and that the debtor began making monthly payments of \$1,088.88.

It appears the debtor's counsel has tried to resolve the issue with the Bank's counsel without success. The Bank objected to confirmation of an earlier plan (a plan virtually identical to the present one, as regards treatment of the Bank), and in reply, the debtor submitted a declaration of his counsel testifying to the same facts as described above, along with copies of the Home Affordable Modification Agreement and Modification Appeal Review Completed letter, on May 2, 2016. Yet despite that evidence, the Bank, in response to the present motion, has filed nothing but the same objection it filed to the original plan; that is, a conclusory statement that the plan is objectionable because it provides for arrears of only \$10,880.80 rather than \$221,513.33.² The court concludes, based on the debtor's evidence and the Bank's complete lack of evidence, that the debtor entered into a valid and binding loan modification agreement providing for ongoing monthly payments of \$1,088.88, and that he was 10 months in arrears when the petition in this case was filed, such that the figure for arrears listed in the debtor's plan is accurate. As the plan proposes to cure those arrears within the plan term, the court rejects the Bank's objection and the debtor's motion will be granted.

The court will hear the matter.

1 Technically, the opposition was filed by the Bank as an objection to confirmation, not an opposition to this motion. The objection is on this calendar as a separate item; however, as explained in the court's ruling on that separate item, the court construes the objection as an opposition to this motion. Technically, counsel's declaration was filed as an opposition to the objection to confirmation; the court construes it as a reply to the opposition.

2 It appears the Bank's representatives have made virtually no effort to resolve the issue. The debtor's counsel testifies:

On April 11, 2016, Wells Fargo Bank filed an objection to confirmation of the plan. I immediately attempted contacted their attorney to discuss the reasoning behind our Plan, and to provide them with the documentation we had in our possession which explicitly supported the figures proposed in our Plan. I provided JAA Law Group a copy of the documentation substantiating the reasoning behind our Plan, and they indicated that they would contact their client to

determine the course of action their client would follow. However, I never received any kind of response from anyone at the JAA Law Group concerning their client's decision. Again on August 29, 2016, the same objection as before was filed by a different Law Firm, ignoring the fact that Ocwen Loan Servicing, LLC had granted the debtor a Loan Modification, which was the basis for the debtor's figures on the proposed Amended Plan.

N. Gomez Decl., DN 68, ¶ 4.

13. [15-20362](#)-D-13 MANUEL/IRENE ALVAREZ MOTION TO MODIFY PLAN
CJY-1 8-19-16 [[31](#)]

14. [16-22667](#)-D-13 DALE/SHERRY HALEY MOTION TO CONFIRM PLAN
SJS-1 8-15-16 [[19](#)]

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.

15. [16-22084](#)-D-13 RICHARD TORREZ AND MONICA MOTION TO MODIFY PLAN
WW-2 TORRZ 8-29-16 [[45](#)]

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. [12-38486](#)-D-13 ROGER/COLEEN BROWN
CJY-1

MOTION TO MODIFY PLAN
8-24-16 [[56](#)]

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.

17. [12-38486](#)-D-13 ROGER/COLEEN BROWN
CJY-2

MOTION TO SUBSTITUTE ROGER
BERNARD BROWN AS THE
REPRESENTATIVE FOR COLEEN ANN
BROWN
8-24-16 [[64](#)]

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 substitute Roger Bernard Brown as the Representative for Coleen Ann Brown 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.

18. [16-22393](#)-D-13 BRANDON/MONIQUE JAMORA
GSJ-1

MOTION TO CONFIRM PLAN
8-10-16 [[43](#)]

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.

19. [14-30697](#)-D-13 CAROLE PETERSEN
PGM-4

MOTION FOR COMPENSATION FOR
MICHAEL E. MECHILL, SPECIAL
COUNSEL
8-25-16 [[189](#)]

20. [16-22099](#)-D-13 RUBEN VALLEJO
PLC-1

MOTION TO CONFIRM PLAN
8-23-16 [[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 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.

21. [16-22099](#)-D-13 RUBEN VALLEJO
PLC-2

MOTION TO VALUE COLLATERAL OF
U.S. BANK, N.A.
8-23-16 [[41](#)]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of U.S. Bank, N.A. 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 U.S. Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

22. [16-24610](#)-D-13 ARMANDO COVARRUBIAS
AP-1

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
9-14-16 [[28](#)]

23. [16-24610](#)-D-13 ARMANDO COVARRUBIAS
HRH-1

OBJECTION TO CONFIRMATION OF
PLAN BY BMO HARRIS BANK, N.A.
9-12-16 [[21](#)]

24. [16-24610](#)-D-13 ARMANDO COVARRUBIAS
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
9-13-16 [[25](#)]

25. [16-20614](#)-D-13 ALFONSO PULIDO
SW-1
ALLY FINANCIAL VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

26. [16-25617](#)-D-13 DOLAN PARKER
GMW-1

CONTINUED MOTION TO EXTEND
AUTOMATIC STAY
9-6-16 [[15](#)]

27. [16-25918](#)-D-13 MICHAEL SHELBY

CONTINUED MOTION TO EXTEND

28. [15-25828](#)-D-13 FRED NEELEMAN
PK-3

CONTINUED MOTION TO MODIFY PLAN
7-20-16 [[57](#)]

Tentative ruling:

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

The debtor's confirmed plan calls for plan payments of \$1,732 for two months, \$1,012 for two months, and \$1,372 for 50 months, for a total of 55 months and a 100% dividend to general unsecured creditors. September of 2016 was the 14th month of the debtor's plan; thus, he has been paying \$1,372 per month. By way of the motion, the debtor would extend the plan term to 60 months and lower the plan payment to \$1,038.85. The only reason the debtor offers for this change is that "not all claims were filed by my unsecured creditors and I unintentionally omitted an unsecured creditor." Debtor's Decl., DN 59, at 2:1-2. It appears that filed claims came in lower than expected - in the confirmed plan, the debtor proposed to pay 100% of claims expected to total \$67,885, whereas by the proposed modified plan, he would pay 100% of claims totaling \$59,123. The debtor filed amended Schedules I and J on May 10, 2016; however, they are identical to his original schedules. Thus, there has been no change to either the debtor's income or his expenses. The debtor would simply like to lower his plan payment by \$333 per month, retaining that extra income for himself.

The trustee opposes the motion on the ground that the debtor's monthly net income, after living expenses, is \$2,809, whereas the proposed plan payment is only \$1,038.85. Under the confirmed plan, the debtor was retaining \$1,437 per month after payment of his living expenses; now he would like to retain \$1,770. The trustee was satisfied with the original plan, but apparently believes the proposed modification is simply going too far. The amount the debtor must pay to meet the liquidation test is only 8%; thus, in the trustee's view, unsecured creditors are at risk of a future modification that could reduce the dividend. The court agrees with the trustee in this particular case. The debtor's monthly expenses, as listed on his Schedule J, are modest; thus, permitting him to retain some excess appears to the court to satisfy the good faith test. However, under the confirmed plan, he was already retaining an extra \$1,437 per month, and that amount has been available to him to cover any unexpected or extraordinary expenses. On the other hand, the debtor has recently filed amended schedules showing his expenses have not changed and he does not suggest they are likely to. In these circumstances, the court is not convinced his proposal to retain for his own purposes, at the expense of his creditors, an extra \$333 per month is made in good faith.

The debtor replies that the trustee has offered no authority for his position. But neither has the debtor. He simply concludes that "[i]f Debtor should, sometime in the future, file a motion to modify his plan and reduce plan payments to unsecured creditors, the Trustee at that time can file his appropriate opposition on the facts of that particular case." Debtor's Reply, DN 66, at 2:20-24. If that should occur, however, the ship would already have sailed - the debtor would have had the use of the extra \$333 per month, with, quite possibly, no way to remain in a 100% plan and the risk would have fallen entirely on the creditors.

For the reasons stated, the court intends to deny the motion. The court will hear the matter.

29. [16-24760](#)-D-13 EFRAIN/MARINA FRANCO OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
9-13-16 [[20](#)]

30. [16-23973](#)-D-13 WAYNE FLORES MOTION FOR RELIEF FROM
VFI-1 AUTOMATIC STAY AND/OR MOTION TO
VALLEY FAMILY INVESTORS, LLC CONFIRM TERMINATION OR ABSENCE
VS. OF STAY
9-20-16 [[45](#)]

Final ruling:

The motion is denied for the following reasons: (1) moving party failed to file a separate Relief from Stay Summary Sheet (Form EDC 3-468) as required by LBR 9014-1; (2) moving party's notice of hearing did not provide the appropriate opportunity for opposition when giving less than 28 days' notice as required by LBR 9014-1(f)(2)(c); (3) the notice of hearing indicates the correct hearing time in the caption, but then indicates an incorrect hearing time (9:30 a.m.) in the text of the document; (4) the proof of service filed in support of the motion does not contain the full case caption as required by LBR 9014-1(e)(3); (5) the proof of service is not signed under oath; and (6) moving party failed to serve the debtor. As a result of these procedural and service defects, the court will deny the motion by minute order. No appearance is necessary.

31. [16-24876](#)-D-13 ERROL ERSKINE OBJECTION TO CONFIRMATION OF

Final ruling:

This case was dismissed on September 21, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

32. [16-24876](#)-D-13 ERROL ERSKINE
WFM-1

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
9-14-16 [[30](#)]

Final ruling:

This case was dismissed on September 21, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

33. [16-24395](#)-D-13 NELLIE YANEZ
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
8-29-16 [[14](#)]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

34. [15-28598](#)-D-13 KENNETH/LISA BERRY
MSN-1

MOTION TO SELL
9-7-16 [[29](#)]