

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Modesto, California

October 17, 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.	17-90307-D-13	ANA MENDOZA	MOTION TO CONFIRM PLAN
	BSH-1		8-30-17 [43]

Final ruling:

This motion, the notice of hearing, declaration, and proof of service were all filed with an incorrect case number and the mailing list attached to the proof of service is from a different case. The debtor's counsel apparently realized the mistake the day after he filed the moving papers, as he then re-filed all the moving papers with the correct case number and the correct mailing list. The second set of moving papers is, apparently, identical in every way to the first set except for the case number. Both sets include the same docket control number. This has required the court to examine both sets closely to determine the differences between them, making the process more time-consuming than it should have been. In any event, as this motion and the accompanying papers include an incorrect case number, the motion will be denied by minute order. No appearance is necessary.

2. 17-90307-D-13 ANA MENDOZA  
BSH-1

MOTION TO CONFIRM PLAN  
8-31-17 [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 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. 15-90515-D-13 EDWARD RAMIREZ AND LEAH  
BSH-6 CUEVAS RAMIREZ

MOTION TO MODIFY PLAN  
8-29-17 [98]

**Final ruling:**

This is the debtors' motion to confirm a third amended chapter 13 plan. On September 24, 2017, the debtors filed a fourth amended plan and a motion to confirm it, set for hearing on November 14, 2017. As a result of the filing of the fourth amended plan, this motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

4. 17-90731-D-13 CHARLOTTE LOCKARD  
MCC-1

AMENDED MOTION TO IMPOSE  
AUTOMATIC STAY  
9-19-17 [12]

**Tentative ruling:**

This is the debtor's motion to impose the automatic stay pursuant to § 362(c)(4)(B) of the Bankruptcy Code. The motion incorrectly cites subd. (c)(4)(B) of § 362 and incorrectly refers to "imposing" the stay. Because the debtor was a debtor in only one prior case that was pending and dismissed within the year prior to the filing of this case, and not two or more prior cases, the applicable law is subd. (c)(3)(B) and the applicable relief would be an extension of the stay, not imposition of the stay. Thus, the court will construe the motion as a motion to extend the stay pursuant to subd. (c)(3)(B), and the motion will be denied because the moving party set the motion for hearing on a date beyond the 30-day period following the commencement of the case. Specifically, the hearing date, October 17, 2017, is the 37th day after the date this case was filed, September 10, 2017. Thus, the hearing cannot be completed before the expiration of that period, as required by § 362(c)(3)(B). "Section 362(c)(3)(B) mandates that the motion and hearing be completed within thirty days." In re Genaro, 2007 Bankr. LEXIS 4818, \*6 (9th Cir. BAP 2007). This is one of two distinct requirements; that is, the 30-day time limit applies regardless of whether the current case was filed in good faith. Id.<sup>1</sup>

In addition, for future reference, counsel should note there were procedural defects with this motion. The notice of motion and motion, memorandum of points and authorities, and supporting declarations were all filed as a single document, rather than separately, as required by LBR 9004-2(c)(1) and 9014-1(d)(4). And the proof of service evidences service of the motion and notice of hearing only, and not the memorandum of points and authorities or the supporting declarations.

Because the hearing on the motion cannot be completed within the 30 days following the date of filing of this case, the motion will be denied by minute order. The court will hear the matter.

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- 1 The court is aware the debtor's counsel initially tried to set the hearing for October 10, and that after the clerk's office notified him that was not a correct date, counsel filed an amended motion and set it for hearing on October 17. Available dates for hearings in Modesto chapter 13 cases are available well in advance on the court's website and it is the moving party's responsibility to select a hearing date on the appropriate calendar - one that will result in the hearing being concluded within the 30-day period. Z

5. 17-90234-D-13 ALVARINO/SHIRLEY LEONARDO OBJECTION TO CLAIM OF PETER T.  
MJD-2 SATERSTROM, DDS, CLAIM NUMBER  
7-1  
8-23-17 [45]

**Final ruling:**

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

6. 17-90234-D-13 ALVARINO/SHIRLEY LEONARDO OBJECTION TO CLAIM OF CAVALRY  
MJD-3 SPV I, LLC, CLAIM NUMBER 8-1  
8-23-17 [41]

**Final ruling:**

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

7. 16-90251-D-13 SILVINO/DANAMARIE BARBOZA CONTINUED MOTION TO MODIFY PLAN  
DRJ-2 8-3-17 [30]

8. 16-90251-D-13 SILVINO/DANAMARIE BARBOZA MOTION TO BORROW  
DRJ-3 9-14-17 [40]

9. 17-90460-D-13 SANTIAGO/GODELEVA OBJECTION TO CONFIRMATION OF  
TGM-1 GUTIERREZ PLAN BY TOYOTA MOTOR CREDIT  
CORPORATION  
9-15-17 [37]

**Final ruling:**

This is the objection of Toyota Motor Credit Corporation to confirmation of the debtors' amended chapter 13 plan. The objection was filed with its own docket control number and a separate notice of hearing, as would be appropriate for an objection to confirmation of a debtor's original chapter 13 plan, under LBR 3015-1(c)(4). Under that procedure, the objection to confirmation was required to be filed by July 26, 2017 and set for hearing on August 22, 2017 (see Notice of Chapter 13 Bankruptcy Case, DN 12), and as such, the objection was not timely filed. The proper procedure for objecting to the debtors' amended plan would have been an opposition to the debtors' motion to confirm that plan, also on this calendar (see LBR 3015-1(d)(1)), using the same docket control number as the debtors' motion (see LBR 9014-1(c)(1) and (4)), and with no separate notice of hearing.

As the objection to confirmation was not procedurally proper, the objection will be overruled by minute order. No appearance is necessary.

10. 17-90460-D-13 SANTIAGO/GODELEVA MOTION TO CONFIRM PLAN  
TOG-1 GUTIERREZ 8-29-17 [26]

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. On October 10, 2017, the debtors purported to withdraw the motion; however, the attempted withdrawal 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). The court concludes from the purported withdrawal, however, that the debtors do not wish to contest the trustee's opposition, and accordingly, the motion will be denied by minute order. No appearance is necessary.

11. 17-90072-D-13 MICHAEL/LERMA MCCORD  
PSB-1

MOTION TO MODIFY PLAN  
9-6-17 [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.

12. 17-90475-D-13 BRIAN BRECKENRIDGE  
APN-1  
FORD MOTOR CREDIT COMPANY  
VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
9-6-17 [39]

**Final ruling:**

This matter is resolved without oral argument. This is Ford Motor Credit Company's motion for relief from automatic stay. The court's 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 debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay as to the debtor and any co-debtor and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

13. 17-90575-D-13 JAMES DUNN, AND NORMA  
DEF-1 DUNN

CONTINUED MOTION TO VALUE  
COLLATERAL OF PNC BANK, N.A.  
7-21-17 [15]

**Tentative ruling:**

This is the debtors' motion to value collateral of PNC Bank, N.A. (the "Bank"); namely, a second deed of trust against the debtors' residence. The Bank filed opposition and the hearing was continued to permit both parties to supplement the record. The Bank has done so. For the following reasons, the motion will be denied.

Debtor James Dunn testifies he owns the property, and in his opinion, its replacement value is \$235,000. The Bank, on the other hand, has submitted the declaration of Richard Paddock, a licensed real estate appraiser who has been working as a residential appraiser since 1977, certified by the State of California since 1991. Mr. Paddock testifies he personally inspected the interior and exterior of the residence and prepared an appraisal report, a copy of which is filed as an exhibit. The report indicates he evaluated four comparable sales. Mr. Paddock testifies he appraised the value of the property at \$305,000 as of the petition date, July 13, 2017, a value that includes deductions for needed repairs, including

a new roof. Given Mr. Paddock's experience as a real estate appraiser, the court gives his valuation considerably more weight than the debtor's, who appears to have no qualifications to appraise real property. Accordingly, the court finds the value of the property to be \$305,000. According to its proof of claim, the holder of the first is owed \$284,121. Thus, there is equity in the property to secure the Bank's second.

For the reasons stated, 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.

14. 16-90177-D-13 TROY/CHARIA SHEETS MOTION TO MODIFY PLAN  
MLP-2 9-9-17 [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.

15. 17-90624-D-13 MICHELE HALES OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY TRUSTEE RUSSELL D.  
GREER  
9-26-17 [16]

Final ruling:

This is the trustee's objection to the debtor's proposed chapter 13 plan. On September 27, 2017, the debtor filed an amended plan and a motion to confirm it, set for hearing on November 14, 2017. 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.

16. 17-90625-D-13 ANTHONY/TENAYA OWENS OBJECTION TO CONFIRMATION OF  
PLAN BY BANK OF AMERICA, N.A.  
9-27-17 [22]