

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 1, 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.	13-29402-D-13 TBK-4	RAMSEY/AMEL MOHAMED	MOTION TO MODIFY PLAN 9-29-16 [61]
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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. 16-23302-D-13 THOMAS PETERSON
ALF-1

MOTION TO CONFIRM PLAN
9-16-16 [33]

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 notice of hearing fails to indicate the location of the courthouse where the hearing will be held, as required by LBR 9014-1(d)(3); and (2) the moving party failed to serve the party listed on Schedule G - the other party to a 12-month lease. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes a party to an unexpired lease with the debtor. Pursuant to Fed. R. Bankr. P. 1007(a)(1), the debtor was required to include that party on the master address list, but did not. Thus, that party has never been given notice of this case.

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

3. 15-29306-D-13 ROSALIO/ROSA MENDOZA
JCK-1

MOTION TO MODIFY PLAN
9-16-16 [34]

4. 11-40912-D-13 ARNEL/KATRINA DE JESUS
KAZ-1
NATIONSTAR MORTGAGE, LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
9-26-16 [158]

Final ruling:

Creditor, Nationstar Mortgage, LLC, is a Class 3 creditor in a plan confirmed December 9, 2013, pursuant to which the stay lifted upon entry of the order confirming plan. The confirmed plan states that, "Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 3 secured claim to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and nonjudicial remedies against its collateral." Accordingly, the motion will be denied by minute order as unnecessary. No appearance is necessary.

5. 13-34116-D-13 ROBERT/TINA BREEDLOVE MOTION TO MODIFY PLAN
EJS-1 9-20-16 [35]

6. 16-25219-D-13 DAVID/WIRIBEA ADUAKO MOTION TO CONFIRM PLAN
TOG-2 9-19-16 [23]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties failed to serve Central State Credit Union, listed on their Schedule D; and (2) the moving parties failed to serve BLR Commercial Real Estate, listed on their Schedule G. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes a party to an executory contract or unexpired lease with the debtor. Pursuant to Fed. R. Bankr. P. 1007(a)(1), the debtors were required to include both Central State Credit Union and BLR Commercial Real Estate on their master address list, but did not. Thus, those parties have never been given notice of this case.

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

7. 14-28526-D-13 DANNY/LUISA ACAIN MOTION TO MODIFY PLAN
JCK-4 9-22-16 [55]

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.

8. 14-21631-D-13 MICHAEL/NANNETTE FARIA CONTINUED MOTION TO MODIFY PLAN
HWW-2 6-30-16 [71]
9. 14-21631-D-13 MICHAEL/NANNETTE FARIA CONTINUED OBJECTION TO CLAIM OF
HWW-4 VENETIAN BRIDGES ASSOCIATION,
CLAIM NUMBER 8
8-16-16 [84]
10. 14-21631-D-13 MICHAEL/NANNETTE FARIA CONTINUED OBJECTION TO CLAIM OF
HWW-5 BAYVIEW LOAN SERVICING, LLC,
CLAIM NUMBER 2
8-16-16 [89]

Tentative ruling:

This is the debtors' objection to the claim of Bayview Loan Servicing, LLC ("Bayview"), Claim No. 2 on the court's claims register. Bayview has filed opposition and the debtors have filed a reply.

The debtors contend the arrearage portion of the claim, as set forth on the proof of claim filed by Bayview's predecessor, CAM Mortgage Trust 2013-1 ("CAM"), \$37,347.40, should be reduced to \$17,640, which should be determined to have been paid in full through the plan. The \$17,640 figure represents exactly 21 payments of \$840 each, which is the amount designated in the debtors' confirmed plan as the monthly arrearage dividend. In addition to the \$17,640, the debtors made a lump-sum payment of \$7,263.32 directly to Bayview in December of 2015 pursuant to a conversation debtor Michael Faria testifies he had with Bayview's employee Jessica Frazier, in which she gave him that figure as the amount required to "bring [the] account current." Debtors' Decl., DN 91, at 2:22.1 Thus, according to the debtors, the total they have paid toward Bayview's arrearage claim is \$24,903.32. In stark contrast, the debtors listed the amount of the arrears at \$45,587 in their three different plans filed in this case, including their confirmed plan. That amount is almost equal to 33 payments at \$1,382 each, which is the amount of the ongoing mortgage payment the debtors listed in their plans. Thus, whereas the debtors admitted in their three filed plans they were 33 payments behind at the time of filing, they would now like to cure that arrearage by paying only 18 months worth of payments ($\$24,903 \div \$1,382$).

Bayview, on the other hand, claims the debtors' ongoing mortgage payment has been only \$1,028.96, representing payments of principal and interest only, whereas the debtors believe their mortgage payment included (and includes) amounts to go toward taxes and insurance. Bayview has been holding the excess received from the trustee, \$352.80 per month, in a suspense account until there was enough in that account to make a full mortgage payment, at which point Bayview applied the amount in the suspense account "to the account" (Bayview's Opp., DN 98, at 3:18-19), with the result that the debtors are now paid ahead on their post-petition payments. It is relatively clear no one has been paying the property taxes on the property,² and Bayview has force placed insurance.

It appears Bayview is wrong about the amount of the ongoing mortgage payment, and thus, has inappropriately applied the excess over and above the \$1,028.96 it claims was the correct amount. First, Bayview has submitted no admissible evidence, only unauthenticated copies of the original loan documents and notices to the debtors that it had force placed insurance, whereas the debtors have testified the mortgage payment has always included an impound amount.³ Second, the loan documents Bayview filed show there were three assignments of the note and deed of trust before Bayview acquired them in 2015, and there is no evidence Bayview obtained an accurate loan payment history from any of its predecessors. Third, one of Bayview's predecessors, CitiMortgage, filed a proof of claim in an earlier case of the debtors with an escrow analysis attached clearly demonstrating the mortgage payment included impounds for taxes and insurance. See Case No. 12-35213, Claim No. 4. Fourth, the deed of trust states the mortgage payment shall include payments toward taxes and insurance, and the lender may waive the debtors' obligation to include those amounts in their mortgage payments only in writing. Bayview does not suggest there has been any such waiver and the debtors testify they have never received one. Finally, the trustee has actually been paying \$1,381.76 as the ongoing mortgage payment, rather than the \$1,382 set forth in the debtor's plan; the trustee almost certainly obtained the \$1,381.76 figure from Bayview's predecessor when his office verified the Class 1 Checklist for that creditor at the outset of the case.

Based on this evidence, the court is prepared to conclude the ongoing mortgage payment was and is supposed to include an impound amount, and therefore, that Bayview has misapplied the excess payments received from the trustee. The debtors, however, have provided no legal authority for their position that Bayview is bound, for purposes of determining its arrearage claim, by Jessica Frazier's apparent statement that the amount required to "bring the account current" was \$7,263.32. The court also cannot conclude the debtors reasonably believed that figure was accurate, given their listing of \$45,587 as the amount of the arrearage claim in their three plans filed in the case. The court notes in this regard that the debtors have been in five chapter 13 cases since July of 2009 and have been in default on the mortgage since the first case was filed. That history likely has made it difficult for Bayview to accurately determine the amounts due.

The court intends to continue the hearing one last time and require the parties to meet and confer to narrow the remaining issues in light the above findings. By "meet and confer," the court means the kind of in-person, or at the very least, telephone communication between their counsel that will likely be necessary to thoroughly address the issues. (As to what the court has in mind, the parties are encouraged to consult In re Sanchez, 2008 Bankr. LEXIS 4239 (Bankr. E.D. Cal. 2008).) In the event the parties cannot agree on the amount of the arrearages, they will be required to file a joint statement as to the precise issues they do not agree on and to state their respective positions on each. The court will hear the matter.

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- 1 Bayview objects that the statement as to what Ms. Frazier said is hearsay. It appears, however, to be admissible as an admission against Bayview's interest.
 - 2 The tax collector filed a proof of claim which has now been disallowed as late filed. The debtors admit, however, that at least a portion of that claim is on account of taxes on the property that is the subject of Bayview's claim.
 - 3 Bayview objects that the debtors "do not provide a scintilla of evidence that would support their statement" Bayview's Opp., DN 98, at 6:26-27. The debtors' testimony, however, is admissible evidence in and of itself.

11. 16-21940-D-13 JUAN/KIMBERLY MARTINEZ CONTINUED MOTION TO CONFIRM
PGM-1 PLAN
7-27-16 [19]

12. 16-22943-D-13 FALEMEI FINAU MOTION TO CONFIRM PLAN
ROC-1 9-12-16 [65]

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 served the motion, notice of hearing, and declaration, but not the plan itself, as required by LBR 3015-1(d)(1); (2) the moving party served only the chapter 13 trustee and the United States Trustee, and failed to serve any creditors, as required by Fed. R. Bankr. P. 2002(b); and (3) the notice of hearing (and subsequent amended notices of hearing) failed to advise potential respondents that written opposition is required (per LBR 3015-1(d)(1), the motion was required to be noticed pursuant to LBR 9014-1(f)(1)), failed to advise them of the deadline for filing and serving it, and failed to advise them of the consequences of failing to file timely written opposition, all as required by LBR 9014-1(d)(4).

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

13. 16-25444-D-13 SERGIO ZAMORA
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-7-16 [26]

14. 15-29450-D-13 HOWARD HILL
JHW-1
CREDIT ACCEPTANCE
CORPORATION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-28-16 [28]

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 relief from stay. As the debtor's Plan indicates he will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

15. 16-25353-D-13 MURIAH KENDALL
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-7-16 [28]

16. 16-20059-D-13 LEY NGAR
RWF-3

MOTION TO CONFIRM PLAN
9-16-16 [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 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. 16-25270-D-13 GEANA LAY
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-7-16 [17]

18. 16-23973-D-13 WAYNE FLORES
HWW-2

MOTION TO CONFIRM PLAN
9-18-16 [35]

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. 16-23973-D-13 WAYNE FLORES
HWW-3

MOTION TO VALUE COLLATERAL OF
CHECK INTO CASH, INC.
10-4-16 [58]

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. 16-23973-D-13 WAYNE FLORES
HWW-4

MOTION TO VALUE COLLATERAL OF
FAST AUTO LOANS, INC.
10-4-16 [61]

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.

21. 16-24379-D-13 KULDIP SANDHU
HWW-2

MOTION TO CONFIRM PLAN
9-15-16 [26]

22. 16-24379-D-13 KULDIP SANDHU
HWW-3

MOTION TO VALUE COLLATERAL OF
BMO HARRIS BANK
N.A./TRANSPORTATION TRUCK AND
TRAILER SOLUTIONS, LLC
10-4-16 [31]

23. 16-24379-D-13 KULDIP SANDHU
HWW-4

MOTION TO VALUE COLLATERAL OF
ENGS COMMERCIAL FINANCE CO.
10-4-16 [34]

Tentative ruling:

This is the debtor's motion to value collateral of Engs Commercial Finance Co. ("Engs"), a 2014 Vanguard refrigerated trailer, at less than the full amount of Engs' claim secured by the collateral. The original notice of hearing stated that written opposition would be required by 14 days prior to the hearing date. However, an amended notice of hearing was filed, which stated no written opposition would be required prior to the hearing. Engs has filed opposition complaining that notice was insufficient; however, the amended notice of hearing clearly provided sufficient notice under LBR 9014-1(f)(2). The court will hear the matter for the purpose of setting a briefing schedule and final hearing date.

24. 16-24379-D-13 KULDIP SANDHU
HWW-5

MOTION TO VALUE COLLATERAL OF
ENGS COMMERCIAL FINANCE CO.
10-4-16 [37]

Tentative ruling:

This is the debtor's motion to value collateral of Engs Commercial Finance Co. ("Engs"), a 2006 utility refrigerated trailer, at less than the full amount of Engs' claim secured by the collateral. The original notice of hearing stated that written opposition would be required by 14 days prior to the hearing date. However, an amended notice of hearing was filed, which stated no written opposition would be required prior to the hearing. Engs has filed opposition complaining that notice was insufficient; however, the amended notice of hearing clearly provided sufficient notice under LBR 9014-1(f)(2). The court will hear the matter for the purpose of setting a briefing schedule and final hearing date.

25.	16-21783-D-13 BSH-3	HECTOR PEREZ	MOTION TO CONFIRM PLAN 9-16-16 [89]
26.	15-29786-D-13 LRR-3	JERROLD CLEMENS AND SHAYLA TRAYLOR	OBJECTION TO CLAIM OF BANK OF THE WEST, CLAIM NUMBER 5 9-13-16 [55]
27.	16-22896-D-13 SJS-2	BERNARD/BARBARA VIGIL	MOTION TO CONFIRM PLAN 9-20-16 [33]
28.	13-29901-D-13 CSL-4	JUANITO/VIRGIE PERALTA	MOTION TO SUBSTITUTE VIRGIE PERALTA AS THE REPRESENTATIVE FOR JUANITO PERALTA 10-7-16 [55]

29.	13-29901-D-13 CSL-5	JUANITO/VIRGIE PERALTA	MOTION TO EXCUSE DEBTOR JUANITO PERALTA FROM COMPLETING THE 1328 CERTIFICATE AND 522 EXEMPTIONS 10-7-16 [60]
30.	16-25228-D-13 RDG-1	PATRICK WOLRIDGE	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-26-16 [13]
31.	16-25228-D-13 ETL-1	PATRICK WOLRIDGE	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION 9-28-16 [16]
32.	11-39533-D-13 CJY-2	EDMOND/CONSTANCE CHICOINE	MOTION TO VALUE COLLATERAL OF FIRST TENNESSEE BANK 10-18-16 [71]

33.	16-26535-D-13 MS-1	LUIS CAVAZOS	CONTINUED MOTION TO EXTEND AUTOMATIC STAY 9-30-16 [8]
34.	16-25444-D-13	SERGIO ZAMORA	OBJECTION TO CONFIRMATION OF PLAN BY BACHELOR PORTFOLIO I, LLC 10-4-16 [24]
35.	16-25449-D-13 RDG-1	GLECER SUASIN	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 10-7-16 [16]
36.	16-24963-D-13 RDG-1	ROXANA NAJERA	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-26-16 [19]

37. 16-26469-D-13 LONEY/MARY TURPIN
TAG-1

MOTION TO EXTEND AUTOMATIC STAY
10-12-16 [14]

Tentative ruling:

This is the debtors' motion to extend the automatic stay pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The court intends to deny the motion because that subsection provides that the court may extend the stay only after notice and a hearing completed before the expiration of the 30-day period after the filing of the case, whereas here, the hearing is being held on the 33rd day after the filing of the case. The court notes the following other procedural defects with the motion: (1) the moving parties served secured creditor PennyMac Loan Services at only one of the two addresses designated on its request for special notice, filed a week before the motion was filed; (2) the moving parties failed to serve the Franchise Tax Board at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b); and (3) the moving parties failed to serve AT&T Retirement Savings Plan, listed on their Schedule D, and failed to serve at least three creditors listed on their Schedule E/F, at all.

Because the hearing on the motion will not be concluded within the 30-day period after the commencement of the case, the motion will be denied. The court will hear the matter.

38. 16-25572-D-13 PHEAREAK PHAN AND
RDG-1 MARCELINA SANCHEZ

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-7-16 [16]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

39. 16-23973-D-13 WAYNE FLORES
VFI-2
VALLEY FAMILY INVESTORS, LLC
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
10-18-16 [74]

40. 16-23684-D-13 JESUS/TERESA LOPEZ
SBM-1
WELLS FARGO BANK, NATIONAL
ASSOCIATION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-14-16 [32]

41. 11-31094-D-13 VAN/KIMBERLY BLADES
CJY-4

MOTION TO VALUE COLLATERAL OF
MTGLQ INVESTORS/SHELLPOINT
MORTGAGE
10-18-16 [145]