

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

November 6, 2018 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.	16-90300-D-13 MSN-3	CRAYTON BOYER	MOTION TO MODIFY PLAN 9-24-18 [51]
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2.	15-90702-D-13 TOG-4	VIRGINIA ZEPEDA	MOTION TO MODIFY PLAN 10-1-18 [89]
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Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

3. 17-91002-D-13 HUMBERTO/MARIA MENDOZA OBJECTION TO CLAIM OF
RDG-3 DEPARTMENT OF THE TREASURY -
INTERNAL REVENUE SERVICE, CLAIM
NUMBER 16
10-5-18 [48]
4. 18-90606-D-13 ANGELO/JUDITH JIMENEZ OBJECTION TO CONFIRMATION OF
APN-1 PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
9-24-18 [15]
5. 16-90910-D-13 DURLABH GANDHI MOTION OBJECTING TO LATE FILED
RDG-4 CLAIM
10-4-18 [131]

Tentative ruling:

This is the trustee's objection to the claim of the Internal Revenue Service, Claim No. 6 on the court's claims register. The objection was noticed under LBR 3007-1(b)(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.

The trustee objected to the original claim, filed September 13, 2017, as having been filed after the claims bar date for governmental units. The original claim was indeed filed several months after the applicable bar date. The trustee also requested that an amended claim of the IRS, filed March 2, 2018, designated on the claims register as Claim No. 6-2, be disallowed. The individual who prepared that claim checked the box indicating that the claim amended the claim filed September 13, 2017, Claim No. 6. However, the amended claim was identical to the original claim except for the dates it was signed and filed and the name of the person who signed it. As both the original and amended claims were filed late, both are properly disallowed.

On October 17, 2018, two weeks after this objection to claim was served, the IRS filed yet another claim, this one also purporting to amend the claim filed September 13, 2017, Claim No. 6. Like the first amended claim, this second amended claim is identical to the original claim except for the dates it was signed and filed and the name of the person signing it. The court issues this tentative ruling

to clarify that because the third claim, the one filed October 17, 2018, is identical to the original claim in all material respects concerning the claim itself, it will not be construed as rendering the trustee's objection moot. Instead, absent opposition presented at the hearing, the court will disallow all three claims, designated on the claims register as Claim Nos. 6-1, 6-2, and 6-3.

The court will hear the matter.

6.	16-90219-D-13	SHARON HAMILTON	MOTION TO DISMISS ADVERSARY
	18-9013	GMW-1	PROCEEDING
	HAMILTON V. B & B 2 ND		9-28-18 [8]
	MORTGAGE, LLC ET AL		

Final ruling:

Pursuant to the stipulated order entered on November 1, 2018, the hearing on this motion is continued to November 20, 2018 at 10:00 a.m. No appearance is necessary on November 6, 2018.

7.	18-90326-D-13	EDWARD/CYNTHIA ROCHA	CONTINUED MOTION TO CONFIRM
	JAD-2		PLAN
			7-16-18 [31]

Tentative ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The court issued a tentative ruling for the initial hearing that indicated the motion would be denied because the moving parties had failed to serve the creditors listed on their Schedule H. The court continued the hearing to give the moving parties the opportunity to correct this service defect.

The moving parties have failed to do so. Specifically, they failed to file and serve a notice of continued hearing. Instead, they served the original notice, the motion, and supporting documents on the creditors listed on their Schedule H, thereby giving them notice of a hearing date and deadline to oppose the motion that had already passed.

As a result of this service defect, the motion will be denied. Alternatively the court will continue the hearing one last time to allow the moving party to correct this service defect.

8.	18-90435-D-13	FELIX CASTRO HERRERA AND	MOTION TO CONFIRM PLAN
	MSN-1	CHRISTINA CASTRO	9-10-18 [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.

9.	17-90554-D-13	JASPAL SINGH	OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 27 10-4-18 [137]
	RDG-5		

10.	18-90665-D-13	MARIA HARRIS	MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE 10-4-18 [16]
	MC-1		

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.

11.	18-90671-D-13	WILLIAM LEMMONS	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-27-18 [18]
	EAT-1		
	WELLS FARGO BANK, N.A. VS.		

12.	17-90479-D-13	JOSEPHINE GOMEZ	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 8-8-18 [86]
	NLL-1		
	CHAMPION MORTGAGE CO., VS.		

Final ruling:

This matter has been resolved by a stipulated order entered on October 30, 2018. As such, the matter is removed from calendar. No appearance is necessary.

13. 17-90479-D-13 JOSEPHINE GOMEZ
PBG-2

OBJECTION TO CLAIM OF
CALIFORNIA FRANCHISE TAX BOARD,
CLAIM NUMBER 5
10-1-18 [100]

Final ruling:

This is the debtor's objection to the claim of the Franchise Tax Board ("FTB"), Claim No. 5 on the court's claims register. The objection will be overruled because the notice of hearing purports to require the filing of written opposition 14 days prior to the hearing date, whereas the moving party gave only 37 days' notice of the hearing, rather than 44 days', as required by LBR 3007-1(b)(1).

For the purpose of any future objection, the moving party should address the following. According to the attachment to the proof of claim, the claim is for taxes, interest, and penalties for the tax year 2015. The attachment indicates the debtor did not file a return for that year. The debtor testified in support of this objection that her only income for many years has been from social security, and thus, she has not been required to file and has not filed tax returns. She stated she was preparing a tax return for 2015, although one is not required, and expected to file it the first week of October. As of this date, she has not done so.

The court's concern is that the debtor's testimony conflicts with other evidence in the record. On an amended Schedule E filed February 20, 2018, the debtor listed a debt to the FTB in the amounts listed on the FTB's proof of claim, and did not schedule the debt as contingent, unliquidated, or disputed. And on February 22, 2018, the debtor filed a modified plan that provided for the full amount of the priority portion of the FTB's claim, \$26,346. That plan was confirmed by order filed April 10, 2018. Yet the debtor now objects to the claim in its entirety. The debtor should provide an explanation of this discrepancy in any future objection to the claim.

As a result of the notice defect described above, the objection will be overruled by minute order. No appearance is necessary.

14. 17-90585-D-13 JOHN/FELICE CIZMICH
RDG-3

OBJECTION TO CLAIM OF
PHILADELPHIA INDEMNITY
INSURANCE COMPANY, CLAIM NUMBER
10-1
10-4-18 [70]

15. 18-90090-D-13 CLIFFORD BARBERA
DJC-6

OBJECTION TO CLAIM OF SARASOTA
CCM, INC., CLAIM NUMBER 6
9-12-18 [92]

Final ruling:

This is the debtor's objection to the claim of Sarasota CCM, Inc. ("Sarasota"), Claim No. 6 on the court's claims register. The debtor objected to the claim as a secured claim on the ground the claim was based on an abstract of judgment recorded in a county in which the debtor owns no property. The debtor did not object to the claim as an unsecured claim. On September 26, 2018, Sarasota filed an amended proof of claim (that expressly states it amends the original proof of claim), which is filed as an unsecured claim. As a result of the filing of the amended proof of claim, the debtor's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

16. 18-90393-D-13 DOMINGO CISNEROS AND
TOG-1 FELIPA VELAZQUEZ

MOTION TO CONFIRM PLAN
10-2-18 [27]

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. 18-90594-D-13 AMANDA SMITHCAMP
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
10-1-18 [21]

18. 18-90606-D-13 ANGELO/JUDITH JIMENEZ
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-15-18 [20]

19. 15-90614-D-13 LETISIA SALDIVAR
PPR-1

TRUSTEE'S FINAL REPORT AND
ACCOUNT
9-12-18 [38]

Tentative ruling:

This is the objection of Bank of America (the "Bank") to the trustee's Notice of Final Report and Account. The Bank objects that the \$2,878 pre-petition arrears claim due on its mortgage claim on certain real property in Ceres, California, has not been paid. The Bank requests the claim be paid by the debtor, either directly or through the plan or, in the alternative, that the arrears claim be determined to be not subject to the debtor's discharge.

Although the Bank did file a timely proof of claim that included the arrears claim, the Bank's claim was provided for in the plan as a Class 4 claim - to be paid by the debtor or a third person directly, not through the plan. Both the plan and the debtor's Schedule A made it clear the debtor's separated spouse was residing in the property and making the mortgage payments. The plan simply did not provide for the Bank's pre-petition arrears claim to be paid through the plan (and payments through the plan are all the trustee's final report and account is concerned with), and the Bank is bound by the order confirming the plan. § 1327(a). The plan provided that upon confirmation, the bankruptcy stay would be "modified to allow the holder of a Class 4 secured claim [the Bank], to exercise its rights against its collateral and any non-debtor in the event of a default under applicable law or contract." Thus, the Bank has had the right all along to exercise its rights under California law against the Ceres property or the debtor's spouse. That it evidently chose not to does not affect the validity of the trustee's final report or the closing of the case. Nor is the Bank's request for a determination of non-dischargeability as to the pre-petition arrears claim appropriate in the context of an objection to the trustee's final report. Accordingly, the objection will be overruled and the final report will be approved.

The court will hear the matter.

20. 18-90621-D-13 KENNETH MCCOY
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-15-18 [14]

21. 18-90626-D-13 DANI IBRAHIM AND ATOURINA OBJECTION TO CONFIRMATION OF
RDG-1 NISANO PLAN BY TRUSTEE RUSSELL D.
GREER
10-15-18 [22]
22. 18-90751-D-13 CHARLOTTE LOCKARD MOTION TO EXTEND AUTOMATIC STAY
MCC-20 10-22-18 [9]
23. 17-90479-D-13 JOSEPHINE GOMEZ MOTION TO MODIFY PLAN
PBG-3 10-17-18 [106]

Final ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party gave only 20 days' notice of the hearing rather than 35 days', as required by LBR 3015-1(d)(1) and applicable rules; and (2) the notice of hearing states that the motion is brought pursuant to LBR 9014-1(f)(2) whereas a motion to confirm a modified plan must be brought pursuant to LBR 9014-1(f)(1). LBR 3015-1(d)(1).

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

24. 18-26462-D-13 ALBERTO DELAROSA MOTION TO EXTEND AUTOMATIC STAY
PGM-1 O.S.T.
10-25-18 [16]