

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

November 24, 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.	15-90504-D-13	FRED/LATANYA FORD	MOTION TO CONFIRM PLAN
	RLF-1		10-9-15 [44]

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.

2. 15-90904-D-13 KURT/MARIA OBISPO MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 10-23-15 [18]
Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'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 the 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.

3. 13-90011-D-13 PAULINE MORIN MOTION TO MODIFY PLAN
PGM-3 10-13-15 [59]

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.

4. 15-90414-D-13 JESSE SELLERS MOTION TO CONFIRM PLAN
CJY-1 10-2-15 [46]

Final ruling:

This is the debtor's motion to confirm a chapter 13 plan. The motion will be denied because the moving party failed to serve Green Tree Servicing, LLC, listed on the debtor's Schedule D as the holder of the mortgage on the debtor's residence. The moving party utilized the PACER matrix for service of this motion; however, because Green Tree was not listed on the debtor's master address list, this creditor was not listed on the matrix and was not served.

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

5. 14-90722-D-13 MICHAEL/JANEEN OWEN MOTION TO APPROVE LOAN
BP-4 MODIFICATION
10-28-15 [62]

6. 15-90829-D-13 BASILIO GARCIA
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-26-15 [20]

Final ruling:

This case was dismissed on October 28, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

7. 15-90335-D-13 SANDRA NARANJO
PGM-1

MOTION TO CONFIRM PLAN
10-2-15 [48]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve the party listed on her Schedule H. 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 an individual who is liable with the debtor on a debt to the IRS. Pursuant to Fed. R. Bankr. P. 1007(a)(1), the moving party was required to include that party on her master address list, which she did not do, and pursuant to Fed. R. Bankr. P. 2002(b), was required to give that party notice of this motion.

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

8. 11-93636-D-13 ALENE WILLIAMS
JCK-5

MOTION TO MODIFY PLAN
10-16-15 [83]

9. 11-91342-D-13 RALPH/MARGARET ROSS
TPH-3

MOTION TO MODIFY PLAN
10-13-15 [53]

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.

10. 15-90442-D-13 FELIPE/NOEMI LEDESMA
TOG-6

MOTION TO CONFIRM PLAN
10-8-15 [48]

11. 15-90555-D-13 SUSAN ALLEN
BSH-1

MOTION TO CONFIRM PLAN
9-18-15 [41]

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 failed to serve the IRS, listed on Schedule D as being owed in excess of \$45,000, at its address on the Roster of Governmental Agencies ("Roster"), as required by Fed. R. Bankr. P. 2002-1 (the moving party served the IRS only at a street address in Stockton, which is not among its three Roster addresses); (2) the moving party failed to serve the U.S. Small Business Administration, listed on Schedule F as being owed \$169,828, at its address on the Roster, instead using only an address in Birmingham, Alabama; (3) the moving party failed to serve the U.S. Dept. of Education, listed on Schedule F as being owed in excess of \$20,000, at its address on the Roster; (4) the moving party failed to serve Mabt/confin, listed on Schedule F, at all; thus, the moving party has not complied with Fed. R. Bankr. P. 2002(b); (5) the moving party served only one of the three parties listed on Schedule G; and (6) the moving party failed to serve Justin T. Allen, listed on Schedule H as a co-debtor on two mortgage loans and a car 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 an individual who is liable with the debtor on various obligations. Pursuant to Fed. R. Bankr. P. 1007(a)(1), the moving party was required to include that party on her master address list, which she did not do, and pursuant to Fed. R. Bankr. P. 2002(b), was required to give that party notice of this motion.

With regard to the IRS, the moving party utilized the primary Roster address on her Schedule D but not on her master address list; instead, she used an address in Stockton that does not appear on the Roster at all. Thus, the IRS has never been given notice of this case at any of the addresses required by the local rule. The debtor's proposed plan does not include the IRS in any of the secured creditor classes, instead stating in the Additional Provisions, "Debtor proposes to leave the IRS liens in place. The debt owed to the IRS represents taxes owed by Debtor's ex-spouse and is currently in 'uncollectable' status." The moving papers offer no explanation as to why these circumstances justify substituting an address for the address listed on the Roster when the IRS is listed on the debtor's Schedule D as a creditor of the debtor. (In addition, the debtor's declaration in support of this motion states, "On the date of the petition in this case I had the debts set forth in Schedules D, E and F.")

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

12. 15-90855-D-13 PHILLIP/NECY LOPEZ OBJECTION TO CONFIRMATION OF
AP-1 PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
10-26-15 [22]

13. 15-90855-D-13 PHILLIP/NECY LOPEZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-26-15 [19]

14. 15-90556-D-13 JENNIFER HOFFMAN MOTION TO CONFIRM PLAN
EWG-1 10-7-15 [33]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve the six creditors added to her Schedule E by amendment filed October 20, 2015.

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

15. 15-90869-D-13 LEONARDO/MELISSA JOSEF MOTION FOR RELIEF FROM
JM-1 AUTOMATIC STAY
SPRINGLEAF FINANCIAL 10-12-15 [14]
SERVICES, INC. VS.

Final ruling:

This matter is resolved without oral argument. This is Springleaf Financial Services, Inc.'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 property is not necessary for an effective reorganization. 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.

16. 15-90772-D-13 DEBORAH WHEELER
BSH-1

MOTION TO CONFIRM PLAN
9-18-15 [17]

17. 13-91473-D-13 BRIAN MYERS
CJY-2

MOTION TO MODIFY PLAN
10-13-15 [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 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.

18. 10-92980-D-13 HIRDEPAL/LAJPAUL BHANGU
DCJ-3

OBJECTION TO CLAIM OF
DEPARTMENT OF THE TREASURY -
INTERNAL REVENUE SERVICE, CLAIM
NUMBER 5
10-7-15 [49]

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 sustain the debtors' objection to claim. Moving party is to submit an appropriate order. No appearance is necessary.

19. 15-90897-D-13 STACY LEACH
MLA-1

CONTINUED MOTION TO VALUE
COLLATERAL OF OCWEN LOAN
SERVICING, LLC
10-6-15 [11]

Tentative ruling:

This is the debtor's motion to value collateral of Ocwen Loan Servicing ("Ocwen"). The hearing has been continued for Ocwen to file opposition and the debtor to file a reply. Ocwen has filed opposition; as of this date, the debtor has not filed a reply.

The debtor seeks to value the claim of Ocwen, secured by a second position deed of trust against the debtor's residence, at \$0. The debtor alleges the value of the property is \$300,000 and the amount due on the first is \$310,353. In support of his estimate of value, the debtor has submitted (1) his own declaration; and (2) a declaration of real estate broker Michael W. Johnson, along with a broker's price opinion. Neither is sufficient to satisfy the debtor's burden of proof as to the value of the property.

The debtor testifies he has owned the property since 2006, he is familiar with the recent property sales in the surrounding neighborhood, and, based on his information and belief, the estimated value of the property is \$300,000. This testimony is hearsay and based on specialized knowledge within the scope of Fed. R. Evid. 702, whereas the debtor has not shown he is qualified to so testify.¹ Mr. Johnson testifies he is a licensed real estate broker, he "caused to be prepared" a broker's price opinion of the value of the property, and he is "informed and believes" the broker's opinion of value is \$300,000. This language is confusing. Does he believe that the value of the property is \$300,000 or that the broker's opinion of value is \$300,000? In any event, he does not testify he himself prepared the broker's price opinion, and the broker's price opinion itself is signed by a broker named M. Wardell Johnson. It is possible Michael W. Johnson and M. Wardell Johnson are the same individual; however, if so, the court must wonder why he has utilized different names for the broker's price opinion and the declaration.

Similarly, the debtor's evidence as to the amount due on the first deed of trust is insufficient. The motion states the amount due is \$310,353, but the debtor's declaration does not mention this issue. The debtor's Schedule D, of which the court takes judicial notice, is some evidence. However, Ocwen, which holds both the first and the second, has submitted a payoff quote, valid through November 18, 2015, showing a payoff balance of \$220,168.75 on the first. The debtor, despite having the opportunity to do so, has submitted nothing in response. As the payoff figure, \$220,168.75, is less than the value of the property, even in the debtor's opinion, \$300,000, the value of the claim secured by the second is not \$0, and the motion will be denied.

The court will hear the matter.

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If testifying under [Fed. R. Evid.] 701, the owner may merely give his opinion based on his personal familiarity [with] the property, often based to a great extent on what he paid for the property. On the other hand, if he is truly an expert qualified under the terms of Rule 702 "by knowledge, skill, experience, training or education . . .," then he may also rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject . . ." pursuant to Rule 703. For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc.

2 Russell, Bankruptcy Evidence Manual § 701:2, pp. 784-85 (West 2012-2013 ed.).

20.	14-90702-D-13	LORENZO OJEDA AND IRMA	MOTION TO COMPEL ABANDONMENT
	SSA-4	MEDINA	11-2-15 [144]

Final ruling:

This case was dismissed on November 4, 2015. As a result the motion will be denied by minute order as moot. No appearance is necessary.

21.	15-91037-D-13	TODD/ROSIE JONES	MOTION TO EXTEND AUTOMATIC STAY
	PLG-1		11-6-15 [8]

22.	10-92562-D-13	JESUS/ELVA VARELA	MOTION TO VALUE COLLATERAL OF
	JDP-2		BANK OF AMERICA, N.A.
			11-2-15 [84]

23.	11-92376-D-13	JAMES WOLF	CONTINUED MOTION TO MODIFY PLAN
	PBG-2		8-18-15 [118]