

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

December 6, 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.

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| 1. | 16-90011-D-13 | WILLIAM WALKER | OBJECTION TO CLAIM OF INTERNAL |
| | MRG-4 | | REVENUE SERVICE, CLAIM NUMBER 9 |
| | | | 10-17-16 [68] |

Final ruling:

This is the debtor's objection to a portion of the claim of the Internal Revenue Service ("IRS"). On October 31, 2016, after the objection was filed, the IRS filed an amended proof of claim. As a result of the filing of the amended proof of claim, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

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| 2. | 16-90643-D-13 | MAURICE MOODY | MOTION TO CONFIRM PLAN |
| | PBG-1 | | 10-12-16 [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.

3. 16-90648-D-13 MOHAMMAD BHUIYAN AND MOTION TO CONFIRM PLAN
DCJ-2 MOSAMMAT AKTER 10-12-16 [40]

4. 13-91251-D-13 CARL/CHRISTINE CARPENTER MOTION TO MODIFY PLAN
TOG-5 10-14-16 [75]

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.

5. 12-91853-D-13 KENNETH/LORI FALKENSTROM CONTINUED MOTION TO INCUR DEBT
PGM-1 8-30-16 [30]

Tentative ruling:

This is the debtors' motion to incur debt for the purchase of a new home. The trustee filed opposition, the debtors filed a reply, and the hearing was continued to allow the debtors to address a particular issue, discussed below. For the following reasons, the motion will be denied.

The purchase would entail an increase of \$600 in the debtors' housing expense, from \$1,400 as listed on their original schedules, to \$2,000 per month. The new mortgage payment would actually be \$3,350 per month - the debtors propose to pay \$2,000 and their son will pay \$1,350. The debtors' declaration supporting the motion provided considerable detail regarding the debtors' respective health conditions, debtor Kenneth Falkenstrom's consequent inability to continue in his prior employment, and the job he eventually obtained that fit with the requirements of his physical condition. The debtors concluded that they believed the purchase of the new home "will be a positive move for our family and allow us to have a stable home as we finish our last year of our bankruptcy plan." The declaration did not indicate when debtor Kenneth Falkenstrom obtained his new job.

In opposition, the trustee pointed out the debtors had failed to file amended Schedule I and J and failed to provide sufficient information about their current income and expenses to justify a \$600 per month increase in their housing expense. The trustee also noted the debtors' son is not named on the mortgage loan application, and therefore, the debtors would likely be obligated for the entire mortgage payment.

In reply, the debtors filed amended Schedules I and J that revealed for the first time that debtor Kenneth Falkenstrom had gotten his new job two years earlier. (He had been listed as having no income when the case was filed four and one-half years ago.) The new job, together with slight changes in the joint debtor's income and income deductions, resulted in a \$1,596 per month increase in the debtors' combined take-home pay and, together with changes in their expenses, a \$1,700 per month increase in their monthly net income. This is \$1,500 per month more than the amount the debtors have been paying as their plan payment, \$200, for the past four and one-half years.

In other words, as the trustee observed at the initial hearing, the debtors have been keeping for themselves \$1,500 per month in disposable income at the expense of their creditors. The hearing was continued for the debtors to address this issue, but they have failed to do so. In addition to this clear violation of the order confirming their plan, the court is concerned with two related issues. First, the debtors' motion to incur debt stated, "The purchase of the property will not adversely affect creditors because it will not alter the plan payments nor the dividend to unsecured creditors, 0%." That statement in itself may have been true; that is, the purchase of the property would not necessarily adversely affect creditors. However, the debtors' failure to disclose the \$1,500 per month increase in their monthly net income has certainly adversely affected creditors. The statement that the purchase would not adversely affect creditors, without revealing the dramatic increase in income, was misleading if not disingenuous.

Second, the debtors' counsel made much at the hearing of an objection to a particular claim, an objection set for hearing on January 10, 2017. However, even if that objection is sustained, there will still be \$97,639 in general unsecured claims going unpaid in this case. In the court's view, the emphasis on the claim objection was a diversion from the real issue, which is that, although the debtors finally volunteered, but only in reply to the trustee's opposition, to increase their plan payment to \$1,900 for the remaining ten months of the plan, they have failed to take any steps to account for the \$1,700 per month they have been keeping for themselves for far longer than that time period.

Finally, the court notes that the hearing was continued for the express purpose of the debtors filing a motion to modify their plan to address the good faith issue raised by their failure to alert the trustee to the dramatic increase in their income two years before they filed this motion. They have not done so. Accordingly, the court intends to deny the motion.

The court will hear the matter.

6. 16-90657-D-13 TODD BRANDT
BSH-1

MOTION TO CONFIRM PLAN
10-18-16 [21]

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.

7. 14-90861-D-13 BRIAN/KIMARY NELSON
CJY-2

MOTION TO MODIFY PLAN
10-14-16 [40]

Final ruling:

The relief requested in the motion is supported by the record, the trustee having withdrawn his opposition, and no other 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.

8. 16-90861-D-13 ROCIO GOMEZ
MSN-1

MOTION TO VALUE COLLATERAL OF
INTERNAL REVENUE SERVICE
10-24-16 [15]

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.

9. 16-90868-D-13 LISA COOPER

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
11-3-16 [23]

10. 16-90868-D-13 LISA COOPER
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
11-7-16 [30]

11. 14-91070-D-13 HARVEY/KIMIKO HENDRIX MOTION TO MODIFY PLAN
SJS-4 10-19-16 [54]
12. 16-90578-D-13 YVETTE IMBERT MOTION TO MODIFY PLAN
MJD-1 10-28-16 [16]
13. 12-90481-D-13 GREGORY/DELLA NIELSEN MOTION TO MODIFY PLAN
DCJ-4 10-24-16 [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.

14. 16-90584-D-13 MANUEL OLIVARES AND CONTINUED OBJECTION TO
APN-1 AGRIPINA YEPEZ CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
8-31-16 [33]

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| 15. | 16-90584-D-13 | MANUEL OLIVARES AND | MOTION TO RECONSIDER MOTION |
| | TOG-1 | AGRIPINA YEPEZ | TO VALUE |
| | | | 11-8-16 [46] |

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| 16. | 14-91190-D-13 | JOSEPH/LISA ROBERTSON | MOTION TO MODIFY PLAN |
| | PLG-2 | | 10-20-16 [57] |

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.

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| 17. | 16-90595-D-13 | HERBERT LONG | MOTION TO CONFIRM PLAN |
| | BSH-1 | | 10-24-16 [28] |

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| 18. | 16-90595-D-13 | HERBERT LONG | MOTION FOR RELIEF FROM |
| | TC-44 | | AUTOMATIC STAY |
| | SANTA CLARA COUNTY FEDERAL | | 11-9-16 [36] |
| | CREDIT UNION VS. | | |

19. 16-90909-D-13 STEFANIE LETSINGER
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
11-21-16 [20]

20. 16-90314-D-13 TERRY FULLEN
RAR-1
THE ESTATE OF RICHARD
EMMONS, DECD. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
11-22-16 [28]

21. 16-90314-D-13 TERRY FULLEN
JAD-1

MOTION TO SELL
11-16-16 [23]

Tentative ruling:

This is the debtor's motion to sell real property. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has the following concern.

The motion states the net proceeds will pay the deed of trust, the debtor's attorney's fees, administrative expenses, and unsecured claims in full. However, the debtor did not list Curtis Fullen and Magana & Carlton, the creditors holding the largest and third largest unsecured claims in the case per the debtor's Schedule E/F, on the master address list, and thus, when this motion was served using the PACER matrix, those creditors were not served. Thus, the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(2). Further, those two creditors have never been given notice of this case, and thus, have not had an opportunity to file a proof of claim.

Finally, the moving party gave only 20 days' notice of the hearing rather than 21 days', as required by Fed. R. Bankr. P. 2002(a)(2). The court intends to continue the hearing and require the moving party to (1) file a notice of continued hearing and serve it on all parties served originally; and (2) serve the notice of continued hearing, together with the motion and supporting declaration and exhibits, on the two creditors previously omitted.

The court will hear the matter.

22. 12-92921-D-13 JESSE/REGINA TOSCANO
CJY-1

MOTION TO APPROVE LOAN
MODIFICATION
11-21-16 [64]

23. 16-91023-D-13 LISA SANCHEZ

MOTION FOR TEMPORARY WAIVER OF
THE CREDIT COUNSELING
REQUIREMENT
11-8-16 [7]

Final ruling:

This case was dismissed on November 28, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

24. 16-91036-D-13 DAVID/CHERYL COWDEN
DCJ-1

MOTION TO EXTEND AUTOMATIC STAY
11-22-16 [9]

25. 11-93274-D-13 FRANK/LISA PEACOCK
SDM-3

CONTINUED MOTION FOR WAIVER OF
THE CERTIFICATION REQUIREMENTS
FOR ENTRY OF DISCHARGE
9-29-16 [75]

26. 11-93274-D-13 FRANK/LISA PEACOCK

CONTINUED ORDER TO SHOW CAUSE
10-24-16 [82]

27. 16-90976-D-13 KURT/MARIA OBISPO
PPR-1

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
11-15-16 [10]