

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

February 4, 2020 at 10:30 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 Lindsey Peratis, the Courtroom Deputy, at (916) 930-4473 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. [19-90801](#)-B-13 ALEXANDER/CECILIA SUAREZ CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY MID
AMERICA MORTGAGE, INC.
10-23-19 [[18](#)]

February 4, 2020 at 10:30 a.m.

2. [20-90001](#)-B-13 CARLA TURNER
[ADR](#)-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
1-18-20 [[21](#)]

JASWINDER ATWAL VS.

3. [19-91007](#)-B-13 AMY LOPEZ
[RDG](#)-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-23-19 [[16](#)]

4. [19-91008](#)-B-13 CYNTHIA TRUSCOTT
[RDG](#)-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-13-20 [[15](#)]

5. [19-91014](#)-B-13 SANDRA RODRIGUEZ
[EAT](#)-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY WELLS
FARGO USA HOLDINGS, INC.
1-2-20 [[26](#)]

Final ruling:

The objection will be denied as moot. The debtor filed an amended plan on January 28, 2020, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

6. [19-91014](#)-B-13 SANDRA RODRIGUEZ OBJECTION TO CONFIRMATION OF
[RDG](#)-1 PLAN BY RUSSELL D. GREER
1-13-20 [[37](#)]

Final ruling:

The objection will be denied as moot. The debtor filed an amended plan on January 28, 2020, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

7. [15-91015](#)-B-13 PEDRO/PATRICIA DIAZ MOTION TO MODIFY PLAN
[JAD](#)-3 12-30-19 [[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.

8. [19-90915](#)-B-13 ANA RAYA CONTINUED OBJECTION TO
[RAS](#)-1 CONFIRMATION OF PLAN BY WELLS
FARGO BANK, NATIONAL
ASSOCIATION
12-11-19 [[17](#)]

9. [19-90817](#)-B-13 GARY COOKSEY MOTION TO CONFIRM PLAN
[BSH](#)-5 12-22-19 [[72](#)]

10. [19-90817](#)-B-13 GARY COOKSEY
[BSH](#)-6

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA AND/OR MOTION
TO AVOID LIEN OF IRS , MOTION
TO AVOID LIEN OF AMERICAN
BUILDERS & CONTRACTORS SUPPLY
CO., INC.
1-14-20 [[95](#)]

11. [19-90817](#)-B-13 GARY COOKSEY
[BSH](#)-7

MOTION TO VALUE COLLATERAL OF
SHEFFIELD FINANCIAL
1-14-20 [[99](#)]

Tentative ruling:

The present Motion To Value seeks an order from the court valuing the secured claim of Sheffield Financial. The Motion indicates the collateral securing the claim is a motor vehicle purchased more than 910 days prior to the petition date. However, the Motion also stated the loan agreement was executed August 29, 2017. By the court's calculation, only 738 days have passed from that date to the September 6, 2019, date of filing. Therefore, the relief requested is barred by 11 U.S.C. § 1325(a)(9), and the Motion is denied. The court will hear the matter. At the hearing counsel should be prepared to explain the misrepresentation in the motion and why sanctions should not be issued.

12. [19-90918](#)-B-13 AMANDA THOMPSON
[RDG](#)-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-6-19 [[18](#)]

13. [16-90219](#)-B-13 SHARON HAMILTON
[DCJ](#)-4

CONTINUED MOTION TO MODIFY PLAN
11-10-19 [[186](#)]

14. [16-90219](#)-B-13 SHARON HAMILTON
[SMC](#)-2

CONTINUED MOTION TO RECONSIDER
12-26-19 [[205](#)]

Tentative ruling:

On December 26, 2019, Susanne Conry filed a Renewed Motion For Reconsideration Of Order #194 and 200. Dckt. 205. The first referenced order granted relief from the automatic stay as to litigation pending in the United State District Court for the State of Colorado, Case No. 14-27262 ("Federal Litigation"). Dckt. 194. The second referenced order is the denial of Conry's first motion for reconsideration, which is why this Motion is purportedly "renewed." Dckt. 200.

Conry is a plaintiff in the Federal Litigation. In this Renewed Motion, Conry argues (1) the motion for relief from stay was not served on her; (2) she was hospitalized throughout the time the motion was filed until it was decided; (3) she was denied an opportunity to appear telephonically; and (4) granting relief from stay is not in the best interest of judicial economy.

B&B 2nd Mortgage, LLC., High Pointe, LLC., and B&B Ventures, LLC, each defendants in the Federal Litigation ("Respondent") filed an opposition to the Renewed Motion on January 7, 2020. Dckt. 211. Respondent argues (1) service to Conry was not required; (2) there was no prejudice caused to Conry by the lifting of the stay; (3) none of the grounds for reconsideration provided by in Federal Rule of Civil Procedure 60 exist here; and (4) Conry could have but did not appeal the order granting relief from stay.

The initial January 21, 2020, hearing on the Renewed Motion was continued at Conry's request to allow time to respond to Respondent's opposition. Since then, Conry filed a Reply and Supplemental Filing.

Conry's Reply (Dckt. 220) is more in the nature of an amendment or supplement, grasping at all possible straws rather than rebutting arguments made by Respondent. She argues for the first time that there is excusable neglect because she was hospitalized during the ruling on the motion for relief and the motion to reconsider. Conry also lays out arguments opposing the relief from stay and explaining what she believes to be Respondent's misconduct. But, none of those arguments actually explain why relief from stay should not be granted.

The Supplemental Filing is essentially a motion to compel the appearance of Robert E. Ray at the February 4, 2020 hearing. Dckt. 222. Conry argues the testimony is necessary to show the "serious and egregious nature of the false statements" made by Ray and Respondent.

The court has reviewed the Renewed Motion, the supporting pleadings, and the record, and has come to a determination.

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order.

First, it is important to note the court already reached a final judgment on the Motion To Reconsider its order granting relief from stay. The court determined in its December 17, 2019, order that there was no basis for relief pursuant to Federal Rule of Civil Procedure 60. Dckt. 200. The Motion to Reconsider was not denied "without prejudice." Conry is attempting to appeal this court's order without actually having to file an appeal by daisy-chaining reconsideration motions of reconsideration motions. A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993).

Second, Conry has not demonstrated cause for reconsideration. A throng of arguments have been provided to show that Conry did not have her day in court, that Respondent failed to follow various procedural rules, and that Respondent made misrepresentations.

But, the court has reviewed Conry's Motion For Relief From Automatic Stay filed on March 23, 2018 seeking relief as to federal litigation. Dckt. 105. And, the court has reviewed Conry's opposition to confirmation of one of the debtor's Chapter 13 Plans where she argued that the debtor in this case is "harassing and impeding Conry's ability to proceed in her Colorado Federal Case . . . which is the agreed proper jurisdiction and venue . . ." Dckt. 142 at ¶ 6. If Conry has any basis for opposing relief from stay on the merits, it has not been presented.

In an untimely opposition to the Motion For Relief (Dckt. 159), Conry argues solely that "the District Court is not inclined to engage in adjudication of this lawsuit if some or all decisions could be later deemed void," and "It also does not appear to be in the parties' best interests or in the interest of oils judicial economy to only partially adjudicate this matter by handling the few claims in this case which may not be impacted by any auto stay." Dckt. 207 at ¶ 6, 9. This was also an argument made in the first Motion To Reconsider and this Renewed Motion. Dckts. 197, 205.

These arguments have no merit. The court's order specified the automatic stay "is lifted and the Federal Litigation may proceed in all respects." Dckt. 194. The inference from Conry's own arguments is that she wants relief from stay so long as the relief is complete. That is the case here.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984). When reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463

(citations omitted).

Here, there is clearly no prejudice, and no meritorious opposition to relief from stay being granted. Conry has stated the stay was impeding her ability to proceed in the “agreed proper jurisdiction and venue.” Conry’s current change in position is demonstrative of her intent to cause delay. Therefore, the Renewed Motion For Reconsideration is denied.

15.

[19-90644](#)-B-13
[DCJ](#)-1

PATRICIA BRIMM

MOTION TO CONFIRM PLAN
12-24-19 [[41](#)]
16.

[19-91045](#)-B-13
[BSH](#)-1

MONICA MAHARAJ

MOTION TO VALUE COLLATERAL OF
AMERICAN CREDIT ACCEPTANCE
1-16-20 [[26](#)]
17.

[19-91045](#)-B-13
[BSH](#)-2

MONICA MAHARAJ

MOTION TO VALUE COLLATERAL OF
AMERICREDIT FINANCIAL SERVICES,
INC.
1-16-20 [[30](#)]

18. [19-91045](#)-B-13 MONICA MAHARAJ
[RDG](#)-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-13-20 [[20](#)]

19. [19-90848](#)-B-13 BOUNYAKONE TANAKHONE
[RDG](#)-1

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
11-25-19 [[23](#)]

Final ruling:

This is a continued hearing on the trustee's objection to the debtor's claim of exemption of certain assets under Corporate Code § 31452. The trustee contends the debtor used an inappropriate code section to exempt these assets. On January 28, 2020, the debtor filed an amended Schedule C. As a result of the filing of the amended Schedule C, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

20. [19-90252](#)-B-13 ERIC/HEATHER OLSON
[JAD](#)-1

MOTION TO MODIFY PLAN
12-17-19 [[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.

21. [19-90556](#)-B-13 GIRARD GOODMAN
[RDG](#)-2

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
11-20-19 [[77](#)]

22. [19-90983](#)-B-13 KIRK TROMBLEY
[RDG](#)-1

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
12-23-19 [[19](#)]

23. [19-90983](#)-B-13 KIRK TROMBLEY
[RDG](#)-2

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-23-19 [[16](#)]

24. [19-91088](#)-B-13 JOE/MELODIE PEREIRA
[JCK](#)-1

AMENDED MOTION TO VALUE
COLLATERAL OF SAFE CREDIT UNION
12-27-19 [[21](#)]

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.

25. [19-91088](#)-B-13 JOE/MELODIE PEREIRA
[JCK](#)-2

AMENDED MOTION TO VALUE
COLLATERAL OF SAFE CREDIT UNION
12-27-19 [[25](#)]

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.

26. [19-90996](#)-B-13 ANTRENA TRIMBLE
[RDG](#)-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-23-19 [[15](#)]

27. [19-90999](#)-B-13 GUSTAVO JIMENEZ
[JCK](#)-1

MOTION TO CONFIRM PLAN
12-26-19 [[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.