

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

February 9, 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.	15-29902-D-13	PETER HERRERA	MOTION TO VALUE COLLATERAL OF
	MJD-1		CALIFORNIA REPUBLIC BANK
			1-6-16 [10]

Tentative ruling:

This is the debtor's motion to value collateral of California Republic Bank. The motion will be denied because the supporting declaration is not signed. Thus, the moving party has failed to submit evidence establishing the factual allegations of the motion and demonstrating that the moving party is entitled to the relief requested, as required by LBR 9014-1(d) (7).

As a result of this evidentiary defect, the motion will be denied by minute order. Alternatively, the hearing will be continued to allow the moving party to address this defect. The court will hear the matter.

Tentative ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The trustee has filed opposition. For the following reasons, the motion will be denied.

The debtors' present confirmed plan requires a 100% dividend to general unsecured creditors. The debtors now seek to reduce the dividend to 60.37% based on an apparent reduction in their income. This is not the first time the debtors have sought to reduce the dividend. In July of 2013, they sought to reduce it to 74.51%, also based on an alleged reduction in income. The debtors claimed in their July 2013 motion that their royalties from oil and gas leases had dropped, from an average of \$7,620 per month to an average of \$6,157.

The trustee opposed that motion because, whereas the debtors claimed to have had a decrease in their royalty income, their two most recent amended Schedules I actually showed an increase in that income. Because of this discrepancy, the trustee was unable to conclude that the reported changes in income were accurate or that the modified plan had been proposed in good faith. The debtors replied that they had stipulated to a 100% dividend in order to resolve the trustee's objection to their original plan, although their income did not support the required plan payment. Although the debtors claimed in their July 2013 motion that their income did not support a plan payment of \$4,023, after that motion was denied, they continued to make a plan payment in that amount for another 33 months, through November of 2015.¹

The debtors would now like to decrease their plan payment to just \$618 per month, beginning December 2015, a drop of \$3,405 from the amount they were able to pay just one month earlier and for the 32 months prior and despite the fact that their latest Schedules I and J show monthly net income of \$1,754 per month with no expected changes in income or expenses. The trustee contends the plan is not proposed in good faith because the debtors propose to pay only \$618 per month to creditors whereas their monthly net income is \$1,754. The court agrees, finding that the debtors have failed to satisfy their burden to demonstrate that the plan is proposed in good faith.

The debtors have submitted two declarations of debtor William McVicker in support of the motion. The first contains only boilerplate recitals about good faith, feasibility, and so on. The only statement in the declaration that is not boilerplate is this (apparently to disclose the purpose of the modified plan): "To reduce the dividend to general unsecureds due to a reduction in income." McVicker Decl., filed Dec. 18, 2015, at 3:14-15. The second declaration provides a line-by-line explanation of the changes in the debtors' income and expenses since the last amended Schedules I and J were filed, in July of 2013. The debtor states that the amount of their royalty income has decreased; he cites an "attached spread sheet detailing the decrease of the income since the filing of the case." McVicker Decl., filed Dec. 21, 2015, at 2:23-24. There is no spreadsheet attached or filed separately. According to the debtors' July 2013 and December 2015 Schedules I, the royalties have dropped from \$6,150 to \$2,125.

The debtors' other income is comprised of the joint debtor's employment income, a small amount in employment income of the debtor, the debtor's pension income and

social security, small amounts from a pasture lease and cell phone reimbursement, and "contributions" from the mother of one of the debtors, \$1,100, and from their children, \$800. The debtor's second declaration refers to the mother's contribution as rent, and an earlier declaration confirms that she lives on the debtors' property. The second declaration filed with this motion states that the debtors' children live on their property and pay rent. The debtors' total income after payroll taxes, mandatory retirement contributions, and health insurance premiums is \$13,250 per month. From this, the debtors deduct expenses totaling \$11,496, leaving monthly net income of \$1,754 per month, of which they propose to pay \$618 to their creditors.

Although the debtor's second declaration addresses the expense categories where the amounts have changed, he has failed to address two other categories that caused the court concern when it denied the motion to modify two and one-half years ago. The court noted in its ruling that the debtors had failed to decrease any of their expenses in response to their alleged reduced income, despite the fact that earlier in the case, they had increased certain expenses significantly, apparently in response to the trustee's discovery that they had dramatically overstated others. For example, in January of 2013, in support of a motion to confirm a first amended plan, the debtors had increased their home maintenance expenses by \$403 per month - from \$150 to \$553 - and increased their transportation expenses by \$784 per month - from \$750 to \$1,534.

The debtors submitted detailed evidence in support of those increases, which included equipment and vehicle repair and upgrade costs the debtors could not possibly expect to continue to incur on an ongoing basis.² In denying the July 2013 motion, the court stated it could not conclude the debtors had included those extraordinary repair and upgrade costs on their amended Schedule J in good faith, or that their failure to reduce those costs in the face of reduced income had been proposed in good faith. The debtors have kept the same figures in their amended Schedule J filed with this motion - \$553³ for home maintenance and \$1,534 for transportation - with no explanation in response to the court's earlier concerns.

In addition, in response to the trustee's objection to the deduction on their original Form 22C of \$3,151 as payroll and social security taxes, the debtors amended the form, reducing those taxes to just \$1,500, explaining only that the latter figure "more accurately reflects [their] tax liability."⁴ The trustee also objected to the debtors' business expenses as listed on their original Schedule J, \$3,776, on the ground the debtors had indicated at the meeting of creditors they had no operating expenses from their oil and gas leases. In response, the debtors amended their Schedule J, reducing their business expenses to \$2,430, then amended it again, reducing those expenses to only \$236 - a huge drop from the original figure. Some of the expenses originally shown as business expenses were moved to personal expenses (alarm service, pest control, memberships and dues, newspapers and subscriptions); another large portion, \$912 for depreciation, was removed after the trustee objected that it was a non-cash expense not appropriate for deduction on a debtor's Schedule J.

To conclude, the debtors' continuing unexplained inclusion of \$553 for home maintenance and \$1,534 for transportation despite the court's earlier ruling expressing its concerns, especially in the context of their earlier pattern of increasing various categories of expenses, sometimes dramatically, to offset the otherwise available income freed up when the trustee discovered significant overstatements in other categories, gives the court considerable pause about the debtors' credibility. Further, the debtors' ability to make plan payments of \$4,023

for 33 months after they attempted to lower the payment to \$3,161 and the dividend to 74% and after they filed amended Schedules I and J showing monthly net income of \$3,161, together with their present proposal to reduce the plan payment to \$618 when even their amended schedules show monthly net income of \$1,754 and to reduce the dividend to 60%, raise doubts about the credibility of their current schedules and about their good faith.

For the reasons stated, the court is unable to conclude the plan has been proposed in good faith. The court will hear the matter.

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- 1 The debtors' new proposed plan calls for plan payments of \$4,023 for months 8 through 40, or through November 2015. The court therefore concludes that the debtors actually made those payments.
 - 2 The debtors filed a list of their home maintenance costs incurred in 2012, all of which they included in calculating the monthly average of \$553. The list included a replacement dishwasher (\$484), greenhouse supplies (\$328), a pool pump (\$165), septic tank pumping (\$650), animal drinking troughs (\$204), HVAC repair (\$314 + \$600), awnings (\$750), alarm service repair (\$426), and a large number of miscellaneous "hardware parts," plants, pool supplies, and other items.

Under transportation costs, they included \$8,190 in repairs to their Honda and \$5,718 in repairs to their Chevy, incurred in 2012. The total listed on their amended Schedule J, \$1,534 per month, included the following costs averaged out to a monthly basis: a transmission (\$3,935), tires (\$350), tires for another vehicle (\$1,382), an IMA battery assembly and transmission control module (\$3,548), a dashboard gauge monitor/portable PC (\$1,414), an update to the same (\$546), and an electronic brake system (\$1,276). The debtors presented no evidence - indeed, they did not suggest - that any of these expenses would need to be duplicated during the life of their plan.
 - 3 The actual figure listed for home maintenance is \$934. The debtor's second declaration states that this includes pest control, a security alarm, and ranch expenses, which were listed on other lines on the prior amended Schedule J.
 - 4 McVicker Decl., filed Jan. 17, 2013, at 7:15-16.

3.	15-29306-D-13	ROSALIO/ROSA MENDOZA	OBJECTION TO CONFIRMATION OF
	RDG-1		PLAN BY RUSSELL D. GREER
			1-15-16 [17]

4. 15-28909-D-13 WESLEY OBERMAN
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-11-16 [37]

5. 15-27011-D-13 PAMELA BECKER
RDG-5

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
1-4-16 [62]

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 trustee's objection to the debtor's claim of exemption. Moving party is to submit an appropriate order. No appearance is necessary.

6. 15-29611-D-13 ANDREW/SHELLYN MOULYN
RS-1

CONTINUED MOTION TO EXTEND
AUTOMATIC STAY
12-29-15 [12]

7. 15-29315-D-13 ANGELINA TORDESILLAS
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-15-16 [14]

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| 8. | 15-28722-D-13
RDG-2 | JACOB WINDING | OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-11-16 [29] |
| 9. | 15-28723-D-13
EAT-1 | MARIA ANAYA | OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
1-12-16 [15] |
| 10. | 15-29426-D-13
RDG-2 | DANIEL/NORA OMALZA | OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-15-16 [24] |
| 11. | 15-29427-D-13
RDG-1 | VICKIE JACKSON | OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-15-16 [21] |

12. 15-27628-D-13 RAUL/PAZ RODRIGUEZ MOTION TO CONFIRM PLAN
TOG-2 12-29-15 [33]

13. 10-53434-D-13 CAROL MASON MOTION TO MODIFY PLAN
HWW-2 1-4-16 [39]

14. 11-45142-D-13 ELIZABETH LAJOS MOTION TO APPROVE LOAN
JBR-12 MODIFICATION
1-4-16 [188]

15. 15-29153-D-13 ROGER/TISHA GALLARDO OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
1-15-16 [51]

Final ruling:

This case was dismissed on January 26, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

16. 15-28957-D-13 MARVIN/MARY JONES
PPR-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY THE
BANK OF NEW YORK MELLON
12-14-15 [19]

Final ruling:

The debtors filed an amended plan on January 7, 2016, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

17. 15-29157-D-13 RICO/ELIZABETH DUNGCA

HEARING RE: CONFIRMATION OF
PLAN
11-24-15 [5]

18. 15-29257-D-13 ERNEST/YOLANDA MARIE
RDG-1 RICHERS

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-15-16 [37]

19. 15-28661-D-13 JOHN BROWN
AP-1

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
1-13-16 [18]

20.	15-21576-D-13 EWG-2	JEREMY/KAREE HARRISON	MOTION TO CONFIRM PLAN 12-21-15 [89]
21.	15-29385-D-13 RDG-1	JOSE MURILLO	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 1-15-16 [29]
22.	15-28689-D-13 JM-1	ANITA TOMBOC	OBJECTION TO CONFIRMATION OF PLAN BY SPRINGLEAF FINANCIAL SERVICES, INC. 1-13-16 [33]
23.	15-28689-D-13 RDG-3	ANITA TOMBOC	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 1-11-16 [30]

24. 15-28899-D-13 DANA BUCKINGHAM
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-11-16 [19]