

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

February 19, 2019 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.	18-90806-D-13 RDG-1	JULIANA PIERI-BELL	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL GREER 12-21-18 [16]
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2.	17-90812-D-13 RDG-5	PAMELA LOOPER	OBJECTION TO CLAIM OF CALIFORNIA CHECK CASHING, CLAIM NUMBER 15 1-9-19 [98]
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Tentative ruling:

This is the trustee's objection to the claim filed by the debtor on behalf of California Check Cashing, Claim No. 13 on the court's claims register, on the ground it was filed late. The objection was noticed pursuant to LBR 3007-1(b)(2); thus,

the court will entertain opposition by California Check Cashing, if any, at the hearing. The debtor has filed opposition, which the court addresses here.

California Check Cashing failed to file a proof of claim by the applicable deadline or at all. The debtor filed a claim on behalf of California Check Cashing on November 27, 2019, the day after the debtor's deadline to file claims for creditors who had not filed their own claims, a deadline set forth in Fed. R. Bankr. P. 3004, as generously extended in this district by LBR 3004-1.1

The debtor contends her delay in filing the claim, being a delay of only one day, should be construed as due to excusable neglect. She also claims California Check Cashing's corporate address is in Oakland, whereas she had scheduled it at a local address in Modesto, such that "the delay in the creditor filing a proof of claim could be due to the lack of notice to the corporation headquarters had insufficient notice to file a timely claim [sic]." Debtor's Reply, filed Feb. 3, 2019, at 2:11-13. She adds that her "counsel has been informed that all bankruptcy notices should be routed to the corporate address in Oakland, CA." Id. at 2:17-18. Finally, the debtor argues that "Equity Demands Waiver of 11 U.S.C. 502(b)(9)" because she noticed the local office "without knowing that the corporate office was the proper place to notice the creditor." Id. 2:25-27.

Pursuant to Fed. R. Bankr. P. 9006(b)(3), the court may enlarge the time for taking action under Fed. R. Bankr. P. 3002(c) (time for filing proofs of claim) only to the extent and under the conditions stated in that rule. Rule 3002(c), in the form that applies in this case (see n.2, below), provides for the allowance of late-filed claims in a variety of circumstances; none is present here. Thus, the court lacks discretion to enlarge the time for filing claims. Gardenhire v. United States Internal Revenue Service (In re Gardenhire), 209 F.3d 1145, 1148 (9th Cir. 2000) ("a bankruptcy court lacks equitable discretion to enlarge the time to file proofs of claim; rather, it may only enlarge the filing time pursuant to the exceptions set forth in the Bankruptcy Code and Rules"); In re Coastal Alaska Lines, Inc., 920 F.2d 1428, 1432-33 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists"); In re Johnson, 262 B.R. 831, 845 (Bankr. D. Idaho 2001) ("Given the unambiguous language of Rule 9006(b)(3) and controlling case law, this Court concludes it is simply not permitted to equitably enlarge the time period for filing proofs of claim absent facts which place Creditors within one of the express exceptions of Rule 3002.")²

Because the court lacks discretion to allow the late claim, the objection will be sustained. The court will hear the matter.

1 The debtor commenced this case on October 4, 2017. The deadline for creditors to file proofs of claim was February 13, 2018. Under Rule 3004, the deadline for the debtor to file proofs of claim would have been March 15, 2018 but for LBR 3004-1. Under the local rule, the Notice of Filed Claims was served on the debtor and her attorney on September 26, 2018. It stated clearly that the debtor's deadline to file claims was November 26, 2018 (a Monday) and it indicated plainly that California Check Cashing had not filed a proof of claim ("Date Claim Filed: Not Filed"). Yet the debtor failed to file her proof of claim on behalf of California Check Cashing until the next day, November 27, 2018.

2 One court has noted that "Rule 3002(c)(6) was amended in 2017 'to expand the

exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim.'" In re Lovo, 584 B.R. 79, 80, n.1 (Bankr. S.D. Fla. March 27, 2018), quoting Rule 3002 advisory committee's note to 2017 amendment. The court need not consider the amended rule because, as in Lovo, it was not in effect when this case was filed. (The amendment went into effect December 1, 2017; this case was filed October 4, 2017.)

3. 17-90818-D-13 LISA GARCIA MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY AND/OR MOTION
WELLS FARGO BANK, N.A. VS. FOR RELIEF FROM CO-DEBTOR STAY
1-18-19 [80]

4. 18-90326-D-13 EDWARD/CYNTHIA ROCHA MOTION TO CONFIRM PLAN
JAD-4 12-26-18 [52]

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. 18-90928-D-13 JOHN/TERRI THEILER MOTION TO VALUE COLLATERAL OF
GSJ-1 CARMAX AUTO FINANCE
1-18-19 [14]

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.

6. 18-90430-D-13 VINCENT COLMORE AND ABANEATHA BISBEE COLMORE OBJECTION TO CLAIM OF RIVER
RDG-1 POINTE COMMUNITY ASSOCIATION,
INC., CLAIM NUMBER 13-1
1-11-19 [92]
7. 18-90731-D-13 FRANCISCO MOSQUEDA AND ELIZABETH TINOCO OBJECTION TO CLAIM OF GLCS,
RDG-1 LLC, CLAIM NUMBER 14-1
1-11-19 [27]
8. 18-90435-D-13 FELIX CASTRO HERRERA AND CHRISTINA CASTRO OBJECTION TO CLAIM OF
RDG-2 STANISLAUS COUNTY TAX
COLLECTOR, CLAIM NUMBER 13
1-11-19 [43]
9. 18-90842-D-13 CHARLES SMITH OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
1-7-19 [27]

Final ruling:

This case was dismissed on January 29, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

10. 18-90144-D-13 ART/TERESA SISNEROZ OBJECTION TO CLAIM OF TITLE MAX
RDG-1 OF CALIFORNIA, INC., CLAIM
NUMBER 18
1-11-19 [34]
11. 13-92155-D-13 GEORGE/JENNIE DELGADO MOTION FOR APPOINTMENT AS
HWW-3 SUCCESSOR TO DECEASED DEBTOR
AND/OR MOTION FOR EXEMPTION
FROM FINANCIAL MANAGEMENT
COURSE
1-22-19 [52]
12. 16-91066-D-13 ALEJANDRO YANEZ AND MOTION FOR RELIEF FROM
DJD-1 CLAUDIA ALVARADO AUTOMATIC STAY
VW CREDIT, INC. VS. 1-8-19 [37]

Final ruling:

Creditor, VW Credit, Inc., is scheduled as a Class 4 creditor to be paid outside the plan, and an order confirming the plan has been entered in this case. The plan contains the language "Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are ... modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract" If the debtor has defaulted under the plan, the stay has already been modified to allow this creditor to proceed with its rights against its collateral under the terms of the underlying loan and security documentation. Accordingly, the motion will be denied by minute order as unnecessary. No appearance is necessary.

Tentative ruling:

This is the application of the debtors' counsel ("Counsel") for additional attorney's fees. The motion will be denied for two reasons. First, the moving party failed to serve the 30 creditors added to the debtors' Schedule E/F by amendment filed March 7, 2018. Thus, the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(6).

Second, the moving party has failed to submit evidence establishing his factual allegations and demonstrating he is entitled to the relief requested, as required by LBR 9014-1(d)(3)(D). This case was filed November 30, 2017 by another attorney. Counsel substituted into the case on January 23, 2018, the day before the meeting of creditors. A week later, the trustee filed an objection to confirmation of the debtors' plan and, a week after that, a motion to dismiss for plan delinquency. The next day, March 7, 2018, the debtors filed amended Schedules A/B, C, E/F, I, and J, a motion to confirm an amended plan, two motions to value vehicles, and a motion to require the debtors' former attorney to disgorge the fees he had been paid, \$860. The trustee withdrew his motion to dismiss and opposed the motion to confirm the plan on the sole ground the motions to value had not yet been ruled on. The motions to value were not opposed but the hearings were continued for the moving parties to correct service defects. The motions were granted at the continued hearings and the plan was confirmed. The disgorgement motion was rendered moot by former counsel's voluntary relinquishment of the \$860 to Counsel.

Counsel initially agreed to take the case for a fixed fee of \$4,000. He received no fees before he substituted in but applied the \$860 from former counsel against that amount. He "opted in" to the fixed-fee procedure set forth in LBR 2016-1(c). He now seeks an additional \$1,715 in fees and \$259 in costs, for a total of \$1,974, which would bring his total compensation in this non-business case to almost 150% of the maximum "no-look" fee. He has submitted his time sheets for preparation of the motion to disgorge fees, for two motions to confirm modified plans, for two motions to incur debt for the purchase of new vehicles, and for defending two motions to dismiss. However, he has not submitted evidence of the services he performed in exchange for the \$4,000 no-look portion of the fees. Instead, he merely concludes that "[e]verything in this case was wrong. It is always more work fixing a broken case than filing a new one." Counsel's Decl., filed Jan. 17, 2019, ¶ 6.

The rule provides that the fixed fee "is not a retainer that, once exhausted, automatically justifies a motion for additional fees." LBR 2016-1(c)(3). On the other hand, without information as to what services Counsel performed in exchange for the fixed fee, the court cannot determine that Counsel is necessarily entitled to additional fees.

Generally, [the fixed] fee will fairly compensate the debtor's attorney for all preconfirmation services and most post-confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation.

Id. Thus, in the form provided by the court for use in seeking additional fees, the applicant represents that "[t]he initial agreed-upon fee, as well as additional fees previously allowed, are not sufficient to fully compensate the attorney for the legal services rendered. The time sheets attached hereto as Exhibit A cover all services rendered to the debtor in connection with this Chapter 13 case since the date the applicant commenced rendering services." Form EDC 3-095 (emphasis added). Here, Counsel has omitted the time sheets describing the services for which he is to be paid \$4,000 and has not represented that the \$4,000 fee is not sufficient to fully and fairly compensate him, and if not, to what extent it is insufficient. Without time sheets evidencing all services rendered by Counsel to the debtors in this case, the court cannot make such a finding.

Finally, the court notes that the local form includes spaces for debtors to signify whether they agree or disagree the additional compensation is reasonable and should be paid, whereas the present motion does not so indicate.

For the reasons stated, the motion will be denied by minute order. Alternatively, if debtor's counsel wishes to supplement the record to address the issues raised in this tentative, the court will consider continuing the hearing.

14. 17-90979-D-13 RORY/SHAMEEMA STEVENS MOTION TO MODIFY PLAN
RKW-7 1-14-19 [123]

Final ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The motion will be denied because the moving parties failed to serve the 30 creditors added to their Schedule E/F by amendment filed March 7, 2018. Thus, the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(9).

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

15. 17-90979-D-13 RORY/SHAMEEMA STEVENS MOTION TO INCUR DEBT
RKW-8 1-17-19 [130]

Final ruling:

This is the debtors' motion to incur debt. The motion will be denied because, although the moving parties served all creditors listed on their original schedules, they failed to serve the 30 creditors added to their Schedule E/F by amendment filed March 7, 2018. Pursuant to Fed. R. Bankr. P. 4001(c)(1)(C), the moving parties are directed to serve any subsequent motion for this relief on all creditors.

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

16. 17-90979-D-13 RORY/SHAMEEMA STEVENS MOTION TO INCUR DEBT
RKW-9 1-17-19 [135]

Final ruling:

This is the debtors' motion to incur debt. The motion will be denied because, although the moving parties served all creditors listed on their original schedules, they failed to serve the 30 creditors added to their Schedule E/F by amendment filed March 7, 2018. Pursuant to Fed. R. Bankr. P. 4001(c)(1)(C), the moving parties are directed to serve any subsequent motion for this relief on all creditors.

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

17. 18-90901-D-13 GARY/COLEEN EDWARDS OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
1-28-19 [19]

18. 18-90901-D-13 GARY/COLEEN EDWARDS OBJECTION TO CONFIRMATION OF
CJO-1 PLAN BY BANK OF AMERICA, N.A.
1-30-19 [14]

19. 18-90913-D-13 JOSE ESCATEL OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
1-28-19 [13]

20. 18-90923-D-13 ESTHER CORTEZ
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-28-19 [20]

Final ruling:

This is the trustee's objection to the debtor's proposed chapter 13 plan. On February 7, 2019, the debtor filed an amended plan and a motion to confirm it. As a result of the filing of the amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

21. 18-90928-D-13 JOHN/TERRI THEILER
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-28-19 [18]

22. 18-90876-D-13 LEONARDO/MELISSA JOSEF
PLG-2

MOTION TO VALUE COLLATERAL OF
ONEMAIN
1-25-19 [27]

23. 18-90876-D-13 LEONARDO/MELISSA JOSEF
PLG-3

MOTION TO VALUE COLLATERAL OF
AMERICREDIT FINANCIAL SERVICES,
INC.
1-25-19 [32]

24. 18-90876-D-13 LEONARDO/MELISSA JOSEF
PLG-4

MOTION TO VALUE COLLATERAL OF
ALLY BANK
1-25-19 [37]