

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

March 26, 2019 at 10:00 a.m.

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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.	18-20805-D-13	GRANT BROOKS	MOTION TO CONFIRM PLAN
	JCK-5		2-6-19 [105]

**Final ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the debtor failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(9). The moving party failed to serve the Law Offices of Douglas S. Srulowitz, added to the debtor's Schedule E/F with a debt of \$10,061, by amendment filed February 15, 2019.

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

2. 18-26205-D-13 ANGEL/ANGELIQUE ESQUEDA CONTINUED MOTION TO CONFIRM  
PGM-2 PLAN  
1-18-19 [42]
3. 17-24412-D-13 JEANINE DAVIS MOTION TO MODIFY PLAN  
PGM-4 2-6-19 [141]
4. 18-21916-D-13 MANUEL ESPARZA MOTION TO VALUE COLLATERAL OF  
JAD-1 FCI LENDER SERVICES  
2-25-19 [23]
5. 18-25917-D-13 DAVIE HUMPHREY OBJECTION TO DEBTOR'S CLAIM OF  
RDG-2 EXEMPTIONS  
2-11-19 [63]

**Final ruling:**

This is the trustee's objection to the debtor's claim of exemption of bank account balances under a particular exemption statute. On February 16, 2019, the debtor filed an amended Schedule C on which he claimed the bank account balances as exempt under a different exemption statute. As a result of the filing of the amended Schedule C, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

6. 18-28021-D-13 ANGEL/KYLE HANSEN  
BOC-1

OBJECTION TO CONFIRMATION OF  
PLAN BY STRATEGIC FUNDING  
SOURCE, INC.  
2-27-19 [34]

**JOINT DEBTOR DISMISSED:  
02/05/2019**

**Final ruling:**

**This is the objection of Strategic Funding Source, Inc. to the debtor's original chapter 13 plan. On March 1, 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.**

7. 18-28021-D-13 ANGEL/KYLE HANSEN  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
2-25-19 [31]

**JOINT DEBTOR DISMISSED:  
02/05/2019**

**Final ruling:**

**This is the trustee's objection to the debtor's original chapter 13 plan. On March 1, 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.**

8. 19-20121-D-13 DEBRA ROY  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
2-25-19 [28]

**Final ruling:**

**The debtor filed an amended plan on March 20, 2019, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.**

9. 18-26931-D-13 ERNEST BEZLEY  
NAR-1  
JOY LYNETTE WORKMAN VS.

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
11-21-18 [12]

10. 18-26931-D-13 ERNEST BEZLEY  
TLA-1

OBJECTION TO CLAIM OF THE  
TRUSTEE OF THE JENNINGS  
REVOCABLE TRUST DATED MARCH 12,  
2007, CLAIM NUMBER 3  
2-7-19 [56]

**Tentative ruling:**

This is the debtor's objection to the claim of the Trustee of the Jennings Revocable Trust Dated March 12, 2007 (the "Trust"). The objection was noticed pursuant to LBR 3007-1(b)(1) and no opposition has been filed. However, the Trust has filed an amended proof of claim.

The amount of the Trust's original claim was \$1,053,653. With his objection and supplemental objection, the debtor has submitted copies of checks in amounts different from the amounts he claims the Trust credited him with, for a total discrepancy of \$32,588. The Trust's amended claim is actually for a higher total amount, \$1,055,178, because the Trust has added amounts for attorney's fees to date and estimated foreclosure fees. The Trust has, however, also decreased the amounts claimed for unpaid interest by a total of \$24,598, which is \$7,990 less than the amount of the discrepancies cited by the debtor. Neither party has explained this \$7,990 discrepancy, but in any event, the court considers the debtor's objection to have been rendered moot by the filing of the amended claim. Accordingly, the objection will be overruled as moot.

The court will hear the matter.

11. 18-26931-D-13 ERNEST BEZLEY  
TLA-2

MOTION TO CONFIRM PLAN  
2-7-19 [61]

12. 18-28033-D-13 MARY NEVIS  
EAT-1

OBJECTION TO CONFIRMATION OF  
PLAN BY NATIONSTAR MORTGAGE LLC  
2-25-19 [16]

13. 18-28033-D-13 MARY NEVIS OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
2-25-19 [19]

14. 19-20036-D-13 JASWINDER SINGH OBJECTION TO CONFIRMATION OF  
CJO-1 PLAN BY ROUNDPOINT MORTGAGE  
SERVICING  
2-22-19 [12]

**Final ruling:**

The debtor filed an amended plan on March 20, 2019, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

15. 19-20036-D-13 JASWINDER SINGH OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
2-25-19 [15]

**Final ruling:**

The debtor filed an amended plan on March 20, 2019, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

16. 16-26640-D-13 JOHN/ANDREA HERNANDEZ MOTION TO INCUR DEBT  
JCK-2 2-27-19 [32]

17. 18-25343-D-13 LATASHA POWELL MOTION FOR RELIEF FROM  
MBW-1 AUTOMATIC STAY AND/OR MOTION  
CENTRAL STATE CREDIT UNION FOR RELIEF FROM CO-DEBTOR STAY  
VS. 3-1-19 [55]

18. 18-26850-D-13 JACQUELINE MCCRAE CONTINUED MOTION TO DISMISS  
RDG-3 CASE  
2-11-19 [62]

**Final ruling:**

**Motion withdrawn by moving party. Matter removed from calendar.**

19. 18-21253-D-13 INGRID CONTRERAS MOTION TO MODIFY PLAN  
MSN-1 2-5-19 [58]

20. 19-20155-D-13 GERALDINE OSEI OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
2-25-19 [22]

21. 14-31860-D-13 JARED GOODRICH MOTION TO MODIFY PLAN  
MKM-1 2-7-19 [56]
22. 18-25069-D-13 GODOFREDO/GLORIA AYRAN OBJECTION TO CLAIM OF CREDIT  
RDG-3 FIRST NA, CLAIM NUMBER 16-1  
2-15-19 [34]
23. 18-25069-D-13 GODOFREDO/GLORIA AYRAN OBJECTION TO CLAIM OF STARDUST  
RDG-4 VACATION CLUB, CLAIM NUMBER  
17-1  
2-15-19 [37]
24. 17-24578-D-13 KATHY FEENEY MOTION FOR RELIEF FROM  
AMM-1 AUTOMATIC STAY  
NATIONSTAR MORTGAGE LLC VS. 2-12-19 [92]

**Final ruling:**

This matter is resolved without oral argument. This is Nationstar Mortgage, LLC'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 that the moving party'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.

25. 18-24992-D-13 LIDIA QUEZADA  
RDG-3

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
2-11-19 [86]

**Tentative ruling:**

This is the trustee's objection to the debtor's claim of exemption of certain airline tickets. On February 12, 2019, the debtor filed a purported amended Schedule C on which she changed the statute under which she claimed the tickets as exempt. Ordinarily, when the debtor files an amended Schedule C on which he or she makes a change meeting the call of the trustee's objection, the objection will be moot. Here, however, the amended Schedule C was not filed under cover of an amendment cover sheet and was not otherwise verified, as required by Fed. R. Bankr. P. 1008. As a result, the amended schedule was ineffective to moot the trustee's objection and the objection will be sustained. The purported amended Schedule C will be stricken from the record as unverified.

The court will hear the matter.

26. 19-21092-D-13 PATRICIA BOWIE  
WJO-1

MOTION TO EXTEND AUTOMATIC STAY  
2-25-19 [8]

27. 17-27693-D-13 ANTHONY MOORE  
PGM-2

OBJECTION TO NOTICE OF  
POSTPETITION MORTGAGE FEES,  
EXPENSES, AND CHARGES  
2-8-19 [113]

**Tentative ruling:**

This is the debtor's objection to the Notice of Postpetition Mortgage Fees, Expenses, and Charges filed June 8, 2018 (the "Notice") by Guild Mortgage Company ("Guild"). Guild has filed opposition. For the following reasons, the objection will be overruled.

The debtor objects to Guild's charges of \$3,500 for post-petition attorney's fees incurred in this case through April 10, 2018. The debtor objects on the grounds that (1) the Notice was not accompanied by billing statements but merely listed 10 dates on which fees were incurred; and (2) Guild was not the prevailing party in any of the positions it took in the case - its opposition to the debtor's motion to impose the automatic stay, its objection to confirmation of the debtor's plan, or its motion to dismiss the case. The debtor requests attorney's fees pursuant to Cal. Civ. Code § 1717 in the amount of \$1,200 for bringing this objection.

Although the recent history of the case has been satisfactory, the record reveals that the case - the debtor's fifth chapter 13 filed in the three years before the commencement of this case - began quite differently. The debtor filed



this case the day after the day the court had informed him at a hearing there was no automatic stay in effect in his then-pending case. He voluntarily dismissed the pending case five days later.

The debtor filed a motion to impose the stay in this case, which Guild opposed on the grounds that (1) this is the seventh case the debtor has filed in the prior five years and the third filed within the prior year; (2) the debtor had failed to make any payments after Guild granted him a loan modification, instead waiting until just before a scheduled foreclosure sale to file bankruptcy; and (3) there had been no change in the debtor's financial circumstances. The court granted the motion on an interim basis, stating it wanted to give the debtor the opportunity to succeed in this case. But the court also continued the hearing to determine whether the debtor would be able to remain current with his plan payments, make his ongoing payments, and adequately protect Guild's interest. The court stated Guild had been patient under the circumstances, that the debtor would need to make his first two plan payments, and that if they were not made, the stay would terminate.

At the continued hearing, the court stated Guild had acted reasonably and patiently, but noted the debtor had experienced unfortunate circumstances. The court acknowledged Guild's position that the debtor had voluntarily dismissed his prior case after a determination there was no stay in place, and added it was prepared to keep a close eye on the case and make sure this was the debtor's last bite at the apple; that is, make sure all of the payments were made so Guild would not be damaged any further. The court told the debtor's counsel he needed to make clear to the debtor that although he had had some bad luck, Guild had been reasonable and this would be the end of the road as far as the opportunity to remain current on his plan payments was concerned. The court continued the automatic stay in effect and continued the hearing again.

In the meantime, the trustee filed an objection to confirmation of the debtor's plan, raising six different objections, and Guild objected based on lack of feasibility because all of the debtor's income over and above his household expenses was already committed to the plan and there was no extra income to fund the higher amount necessary to meet the trustee's feasibility objections. At the first hearing on the objections to confirmation, the debtor still had not addressed the issue of his voluntary contribution to a 401(k) plan. The court continued the hearings, noting it would be keeping the debtor on a short leash.

The court held two more continued hearings, to be certain the debtor would make the plan payments, before it determined the plan would be confirmed. At the final hearing on the objections to confirmation, the court stated Guild's counsel had been reasonable under the circumstances. At yet another continued hearing, this one on Guild's motion to dismiss, the court advised the debtor's counsel to communicate to his client he would need to stay current on his plan payments, that he had reached the last of his chances.

That hearing was held April 10, 2018. The debtor did not make his plan payment due April 25 and the trustee, after waiting 12 days, filed the first of what would be four motions to dismiss for plan delinquency. The debtor did not make his April, May, or June payment on time, and each time, after a substantial waiting period, the trustee filed a motion to dismiss. In each case, the debtor made the payment before the hearing. At the hearing on the third motion, the court asked the debtor's counsel to let the debtor know the court had given him every opportunity. Yet the trustee filed a fourth motion to dismiss on October 10, 2019. At the October 30 hearing, the trustee's counsel said she had checked the records at 4:00 p.m. the day

before, finding no payment. The debtor's counsel said his staff had checked at 4:59 p.m. and found the payment had been made.

Considering all of these circumstances, the court is persuaded the fees charged by Guild, a total of \$3,500, are more than reasonable. Guild's opposition and billing statements indicate its counsel spent 14 hours on the case and billed at \$250 per hour. The court, having reviewed both the documents filed by Guild throughout the case and the arguments at the hearings, finds both figures to be reasonable. The court also finds the fees to have been incurred within the scope of the attorney's fee provision in Guild's deed of trust,<sup>1</sup> and to be appropriately allowed under § 506(b) of the Bankruptcy Code as the debtor's schedules indicate Guild is an oversecured creditor.

The factors the court is to consider under that section are whether "(1) the claim is an allowed secured claim; (2) the creditor is oversecured; (3) the fees are reasonable; and (4) the fees are provided for under the agreement." In re 1910 Partners, 2017 Bankr. LEXIS 4211, \*18 (9th Cir. BAP 2017), citing In re Kord Enters. II, 139 F.3d 684, 687 (9th Cir. 1998). It is not a requirement for recovery under § 506(b) that the creditor have been the prevailing party. In re Kord Enters. II, 1996 U.S. Dist. LEXIS 13886, \*9, n.9, 1996 WL 557647 (N.D. Cal. 1996).

The key determinant for "reasonableness" is whether the creditor incurred expenses and fees that fall within the scope of the fees provision in the parties' agreement and took the kinds of actions that similarly situated creditors might reasonably conclude should be taken. The bankruptcy court should inquire whether, considering all relevant factors including duplication, the creditor reasonably believed that the services employed were necessary to protect its interests in the debtor's property.

1910 Partners, 2017 Bankr. LEXIS 4211, \*18, citing In re Dalessio, 74 B.R. 721, 723 (9th Cir. BAP 1987). The court has no hesitation in concluding these standards have been met by Guild and its counsel in this case.

For the reasons stated, the objection will be overruled and the debtor's request for an award of attorney's fees will be denied.<sup>2</sup> The court will hear the matter.

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1 "If Borrower . . . fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy . . .) . . . then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property . . . . [¶] Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower and be secured by this Security Instrument." Guild's Ex. A, p. 4, ¶ 7.

2 The debtor complains there was no breakdown of the attorney's fees in the Notice. He cites no authority for the proposition that a breakdown was required. In any event, however, Guild's counsel testifies that on February 4, 2019, in response to a telephone request, he emailed a breakdown of his fees to the debtor's counsel, who, according to the billing statement for his own fee request, did not review the breakdown before preparing and filing this objection on February 8.

28. 18-26794-D-13 ANTONIO/FIDELIA JACQUEZ MOTION TO CONFIRM PLAN  
TOG-1 2-19-19 [28]
29. 15-25997-D-13 AL GREEN MOTION TO COMPROMISE  
GS-2 CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH HILTON  
WORLDWIDE, INC. AND/OR MOTION  
FOR DISBURSEMENT OF SETTLEMENT  
PROCEEDS  
2-22-19 [96]
30. 19-21406-D-13 YONSON GESCAT MOTION TO EXTEND AUTOMATIC STAY  
MEV-1 3-11-19 [10]
31. 16-21519-D-13 BENNY/LUCY YERRO CONTINUED MOTION FOR HARDSHIP  
JAD-2 DISCHARGE  
2-7-19 [50]

32. 18-26931-D-13 ERNEST BEZLEY  
TLA-2

OBJECTION TO CONFIRMATION OF  
PLAN BY JOY LYNETTE WORKMAN  
3-12-19 [76]

**Final ruling:**

This is an objection to confirmation of the debtor's amended chapter 13 plan. The objection was filed with its own notice of hearing, which resulted in the matter being calendared separately from the debtor's motion to confirm the amended plan. This conforms to the procedure for objecting to a debtor's original plan (LBR 3015-1(c)) but not to a debtor's amended plan (LBR 3015-1(d)(1)). The court will construe the objection as an opposition to the debtor's motion to confirm an amended plan, also on this calendar. This objection as a stand-alone objection will be overruled as having been improperly noticed.

33. 18-24864-D-13 ERIC BARBARY AND MARIAN  
PGM-4 CORK-BARBARY

CONTINUED MOTION TO MODIFY PLAN  
2-1-19 [75]

34. 18-26794-D-13 ANTONIO/FIDELIA JACQUEZ  
TOG-2

MOTION TO APPROVE LOAN  
MODIFICATION  
3-12-19 [37]