

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

April 9, 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.	19-20200-D-13	KIMAKO STRICKLAND	OBJECTION TO CONFIRMATION OF
	RDG-1		PLAN BY RUSSELL D. GREER
			3-11-19 [14]

2. 17-25901-D-13 CHARLES/SHANNON MCKINLEY MOTION TO MODIFY PLAN
MC-1 2-22-19 [37]

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. 18-26801-D-13 JASON/JOSEPHINE COMBS MOTION TO CONFIRM PLAN
WLG-1 2-26-19 [43]

Final ruling:

This case was dismissed on March 28, 2019. As a result the motion will be denied by minute order as moot. No appearance is necessary.

4. 18-21606-D-13 PHILLIP/KIMBERLY ORTIZ MOTION TO CONFIRM TERMINATION
DJD-1 OR ABSENCE OF STAY
2-28-19 [29]

5. 16-20815-D-13 CHRISTOPHER/SEUN FAGBOLU MOTION TO AVOID LIEN OF
MC-5 AMERICAN EXPRESS CENTURION BANK
3-11-19 [54]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

6. 18-26115-D-13 ANTHONY GOMEZ MOTION TO CONFIRM PLAN
GS-2 2-25-19 [37]

Final ruling:

This is the debtor's motion to confirm a second amended chapter 13 plan. On March 25, 2019, the debtor filed a third amended plan (although without a motion to confirm it). As a result of the filing of the third amended plan, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

7. 19-20220-D-13 SCOTT THOMPSON OBJECTION TO CONFIRMATION OF
PPR-1 PLAN BY BANK UNITED, N.A.
2-21-19 [17]

Final ruling:

This case was dismissed on March 5, 2019. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

8. 18-28021-D-13 ANGEL/KYLE HANSEN MOTION TO CONFIRM PLAN
MKM-2 3-1-19 [40]

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

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because there is no proof of service on file. The motion will be denied by minute order. No appearance is necessary.

9. 19-20121-D-13 DEBRA ROY OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
2-25-19 [31]

Tentative ruling:

This is the trustee's objection to the debtor's claim of exemption of various household goods on the ground she failed to indicate a dollar amount for her exemption, instead providing for "100% of FMV up to any applicable statutory limit." On March 20, 2019, the debtor filed a purported amended Schedule C on which, as to her household goods, she claimed particular amounts as exempt, rather than 100%. 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.

10. 18-26522-D-13 ALICIA BROWN-RILEY MOTION TO CONFIRM PLAN
FF-1 2-27-19 [36]

Final ruling:

This is the debtor's motion to confirm a first amended chapter 13 plan. On March 7, 2019, the debtor filed a second amended plan and a motion to confirm it. As a result of the filing of the second amended plan, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

11. 19-20233-D-13 ALFONSO PULIDO OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
2-7-19 [24]

Final ruling:

This is the objection of U.S. Bank to the debtor's originally-proposed chapter 13 plan. On March 8, 2019, the debtor filed an amended plan and a motion to confirm it. As a result of the filing of the amended plan, the present objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

12. 19-20233-D-13 ALFONSO PULIDO CONTINUED MOTION TO EXTEND
GMW-1 AUTOMATIC STAY
1-29-19 [15]

13. 19-20233-D-13 ALFONSO PULIDO OBJECTION TO CONFIRMATION OF
RAS-1 PLAN BY U.S. BANK, N.A.
2-11-19 [31]

Final ruling:

This is the objection of U.S. Bank to the debtor's originally-proposed chapter 13 plan. On March 8, 2019, the debtor filed an amended plan and a motion to confirm it. As a result of the filing of the amended plan, the present objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

14. 19-20738-D-13 FABIAN SPEED MOTION TO IMPOSE AUTOMATIC STAY
JM-1 2-8-19 [9]

Tentative ruling:

This is the debtor's motion ostensibly to impose the automatic stay pursuant to § 362(c)(4) of the Bankruptcy Code. The motion lists the debtor's two prior cases; however, only one of them was pending within the year prior to the filing of this case. The first prior case was dismissed on November 17, 2017, almost 15 months before the present case was filed, on February 8, 2019. Thus, the debtor was a debtor in only one case pending and dismissed within the year prior to the commencement of this case, and the appropriate motion would have been a motion to extend the automatic stay pursuant to § 362(c)(3).

The court will construe the motion as a motion to extend the stay under that subdivision and will deny the motion because it was not set for hearing on a date within the 30-day period after the filing of this case, as required by § 362(c)(3)(B). That is, the hearing cannot be completed before the expiration of that 30-day period, that period having expired on March 10, 2019.

Because the hearing will not be completed before the expiration of the 30-day period after the filing of this case, the motion will be denied. The court will hear the matter.

15. 18-25343-D-13 LATASHA POWELL MOTION TO CONFIRM PLAN
HLG-2 2-13-19 [45]

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.

16. 19-20145-D-13 AUGUSTINE/ENEDINA GARCIA OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
3-11-19 [22]

17. 19-20248-D-13 VALERIE MARIN OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
3-11-19 [36]

18. 19-20749-D-13 MIKE/THELMA DOUGHERTY MOTION TO CONFIRM PLAN
CLH-1 3-1-19 [15]

19. 18-26850-D-13 JACQUELINE MCCRAE MOTION TO CONFIRM PLAN
2-19-19 [68]

Final ruling:

This is the debtor's motion to confirm a proposed chapter 13 plan. It is unclear from the motion which plan it pertains to. The motion was filed roughly one month after the debtor filed a second amended plan; thus, the court assumes the motion pertains to that plan. In any event, however, on March 5, 2019, the debtor filed a third amended plan and a motion to confirm it. As a result of the filing of the third amended plan, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

20. 18-26850-D-13 JACQUELINE MCCRAE MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 2-27-19 [79]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

21. 18-26850-D-13 JACQUELINE MCCRAE OBJECTION TO DEBTOR'S CLAIM OF
RDG-5 EXEMPTIONS
2-25-19 [69]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions filed February 5, 2019. The objection was filed on the ground the claim of exemptions did not indicate the code sections or values of the claimed exemptions. On March 6, 2019, the debtor filed a further amended Schedule C on which she indicated the code sections and values of the claimed exemptions. As a result of the filing of the further amended schedule, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

22. 18-27753-D-13 DAVID SEGURA AND MARGARET MOTION TO CONFIRM PLAN
JCK-1 PATRICK 2-14-19 [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.

23. 18-27660-D-13 KENNETH/TOMIKA JOHNSON CONTINUED OBJECTION TO
RDG-2 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
1-28-19 [20]

24. 18-27660-D-13 KENNETH/TOMIKA JOHNSON MOTION TO AVOID LIEN OF
RK-2 AMERICAN EXPRESS BANK, FSB
3-7-19 [40]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

25. 19-20063-D-13 ROBERT KINANN
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
2-25-19 [25]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response has been filed and the trustee's objection to the debtor's claim of exemptions is supported by the record. The court will issue a minute order sustaining the trustee's objection to debtor's claim of exemptions. No appearance is necessary.

26. 13-35379-D-13 STEVEN/SOCORRO JOSEPH
JCK-2

OBJECTION TO CLAIM OF
CITIFINANCIAL SERVICES, INC.,
CLAIM NUMBER 4
2-20-19 [35]

Tentative ruling:

This is the debtors' objection to the claim of CitiFinancial Services, Inc. ("Citi"), Claim No. 4 on the court's claims register. The court intends to overrule the objection on two grounds.

First, the objection was served on Citi at the address on its proof of claim but not at the different address on the debtors' schedules, as required by LBR 3007-1(c).

Second, the objection addresses the treatment of the claim, not its validity or amount as of the petition date. The debtors listed "Onemain Fi" (apparently Citi's predecessor in interest) on their Schedule D as being owed \$15,513, of which \$6,269 was scheduled as secured and \$9,244 as unsecured. Citi filed a claim for slightly less: \$15,048, of which \$6,269 was claimed as secured and \$8,779 as unsecured. Thus, it does not appear the claim was disputed by the debtors at the time it was filed, on January 2, 2014, or at the time the debtors filed their petition, on December 4, 2013. In fact, on December 12, 2013, the debtors filed a motion to value the collateral of OneMain Financial at \$6,269, which was granted. Further, the debtors do not presently dispute that the proof of claim accurately reflects the amounts due - both secured and unsecured - as of the petition date.

The debtors state in the objection that payments of \$118.30 were made from January of 2014 through May of 2016, for a total of \$2,939.38, leaving a balance due of \$3,329.62 (on the secured portion of the claim). They also state the vehicle was totaled in May of 2016, the debt was paid in full by Geico Insurance, and the trustee stopped making payments to Citi the same month. The objection concludes:

CitiFinancial Services has agreed by phone that the debt has been paid in full but at this time, however after several attempts by Debtors, CitiFinancial Services has not amended their Proof of Claim and therefore, Trustee is unable to allow the Chapter 13 to close. [¶]
THEREFORE, the Debtors seek an Order Disallowing any further balance 'owed', such that their Chapter 13 plan will be considered paid in full.

Debtors' Obj., filed Feb. 20, 2019, at 1:27-2:2.

Under § 502(b) of the Bankruptcy Code, claims are determined as of the petition

date. The post-petition satisfaction of a claim, such as by payment through the plan or by a third party constitutes a treatment of the claim, not a ground for objecting to the claim. While it may be easier for counsel to object to a claim than to modify a confirmed plan to provide for a claim as, for example, a Class 3 claim, that is not an appropriate basis for disallowing a claim that was proper as of the petition date.

For the reasons stated, the court intends to overrule the objection. The court will hear the matter.

27. 19-20292-D-13 KIM WALKER AMENDED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D GREER
3-11-19 [22]
28. 16-27397-D-13 YOLANDA BURGIN MOTION TO MODIFY PLAN
PGM-7 2-26-19 [139]
29. 17-28208-D-13 ALFREDO/VERONICA LACESTE MOTION FOR RELIEF FROM
ADR-1 AUTOMATIC STAY
GANN PROPERTIES LP VS. 3-25-19 [95]

30. 18-28021-D-13 ANGEL/KYLE HANSEN OBJECTION TO CONFIRMATION OF
BOC-2 PLAN BY STRATEGIC FUNDING
SOURCE, INC.
3-26-19 [48]

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

Final ruling:

This is an objection to confirmation of the debtors' amended chapter 13 plan. The objection was filed with its own docket control number and notice of hearing, which is 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 debtors' motion to confirm an amended plan, also on this calendar. This objection as a stand-alone objection will be overruled by minute order as having been improperly noticed. No appearance is necessary.

31. 19-21321-D-13 STEPHEN/STEPHANIE YOUNG MOTION TO VALUE COLLATERAL OF
RJ-3 FINANCIAL CENTER CREDIT UNION
3-26-19 [22]

32. 19-21321-D-13 STEPHEN/STEPHANIE YOUNG MOTION TO VALUE COLLATERAL OF
RJ-2 FINANCIAL CENTER CREDIT UNION
3-26-19 [26]

33. 11-47081-D-13 ANA LEMOS
19-2032 TOG-1
LEMOS V. GILLIS 3-22-19 [12]

MOTION TO DISMISS ADVERSARY
PROCEEDING

Tentative ruling:

This is the defendant's motion to dismiss this adversary proceeding pursuant to Fed. R. Civ. P. 12(h)(3), incorporated herein by Fed. R. Bankr. P. 7012(b) for lack of subject matter jurisdiction. The plaintiff has filed opposition. The court intends to continue the hearing and require additional briefing.

The briefing on both sides is as perfunctory as the court has seen in its years on the bench; each brief is essentially one page long and neither cites any case authority. The defendant cites only 28 U.S.C. § 1334 and § 105 of the Bankruptcy Code, and those only for the most general of propositions and without any application to the facts in this adversary proceeding. In addition, § 1334 is cited for an incorrect proposition. The plaintiff cites 28 U.S.C. § 1334(e), which concerns the bankruptcy court's exclusive jurisdiction over property of the estate, but the property in question has long since reverted in the plaintiff and there is no suggestion that recovery by the plaintiff would have any impact on the bankruptcy estate in her long-closed case. The plaintiff also argues it is within this court's exclusive jurisdiction to determine whether the defendant's filing and service of a motion to value collateral while the plaintiff's chapter 13 case was still open were in compliance with "B.L.R.," which the court takes to mean its local rules. The plaintiff offers no authority for or analysis of her position.

Neither party addresses even the most basic principles of bankruptcy court jurisdiction or suggests how they should be applied to the facts of this adversary proceeding. The defendant disputes that this is a core matter, while the plaintiff contends it is, but neither discusses the distinction between core and non-core proceedings or offers any reasoning for his or her position.

Based solely on the briefing, the court would be inclined to grant the motion because the burden of proof is on the plaintiff to establish that this court has subject matter jurisdiction. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994); Hess v. Comm'r of the Internal Revenue, 2002 U.S. Dist. LEXIS 20818, *3-4 (E.D. Cal. 2002); Prior v. Tri Counties Bank (In re Prior), 521 B.R. 353, 360 (Bankr. E.D. Cal. 2014). On the other hand, it seems intuitive that a malpractice action by a former chapter 13 debtor against her then bankruptcy attorney based on his conduct during the chapter 13 case would be within this court's concurrent, if not exclusive, jurisdiction. However, it is not the court's job to decide motions based on intuition or to do the parties' research or make their cases for them.

The court will hear the matter.

34. 18-21589-D-13 ANTHONY/VIRGINIA MASTEL MOTION TO INCUR DEBT
GSJ-1 3-22-19 [22]
35. 16-22393-D-13 BRANDON/MONIQUE JAMORA MOTION TO INCUR DEBT
GSJ-5 3-22-19 [76]
36. 18-26794-D-13 ANTONIO/FIDELIA JACQUEZ CONTINUED MOTION TO CONFIRM
TOG-1 PLAN
2-19-19 [28]