

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

April 16, 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.	18-90001-D-13	DAVID/STEFFANI LUCAS	MOTION TO SELL
	RKW-1		3-14-19 [56]

2.	18-90901-D-13	GARY/COLEEN EDWARDS	MOTION TO AVOID LIEN OF BREWER
	JAD-1		QUILTING & SEWING SUPPLIES
			3-13-19 [34]

Tentative ruling

This is the debtors' motion to avoid a judicial lien held by Brewer Quilting & Sewing Supplies, a limited liability company. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. The court notes, however, that in the request for relief, in addition to an order

avoiding the lien, the moving parties also request an award of their costs and fees. They have provided no evidence or authority for such an award; thus, none will be awarded.

The court will hear the matter.

3. 19-90204-D-13 DENNIS/KATHLEEN SNYDER MOTION TO VALUE COLLATERAL OF
JAD-1 MR. COOPER
3-14-19 [9]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Mr. Cooper at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. 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 set the amount of Mr. Cooper's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

4. 18-90738-D-13 LARRY FOSTER MOTION TO CONFIRM PLAN
DCJ-3 3-5-19 [71]

Final ruling:

This is the debtor's motion to confirm a second amended chapter 13 plan. The motion will be denied because the plan provides for the secured claim of 2005 Residential Trust 3-2 at \$0 based on the allegation that the claim is unenforceable due to the statute of limitations. In two prior plans, the debtor sought to provide for this secured claim at \$0 based on the value of its collateral. When this creditor objected on the basis that the debtor had, in pre-petition litigation, declared the property had appraised at \$150,000 higher than he now values it, the debtor switched his strategy to the statute of limitations argument. Whereas his motion to confirm a first amended plan was denied because he had failed to file a motion to value collateral, as required by LBR 3015-1(i), this motion will be denied because he has failed to file an objection to the claim and has failed to provide for all secured claims in one of the three ways set forth in § 1325(a)(5).

The court notes also that the trustee raised the same two objections he raises here in response to the debtor's motion to confirm his first amended plan, and the creditor, as indicated, has found it necessary to object to all three of the debtor's plans proposed thus far. The court finds the debtor has not proposed this plan in good faith and he and/or his counsel is wasting the court's, the trustee's, and the creditor's time and resources.

For the reason stated, the motion will be denied by minute order. No appearance is necessary.

5. 18-90738-D-13 LARRY FOSTER CONTINUED MOTION FOR RELIEF
SLG-2 FROM AUTOMATIC STAY
2005 RESIDENTIAL TRUST 3-2 1-30-19 [51]
VS.

6. 18-90647-D-13 JOSE MORALES AND VERONICA MOTION TO CONFIRM PLAN
TOG-2 ALVARADO 3-11-19 [48]

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.

7. 16-91052-D-13 SUDESH/RIAA NARAYAN OBJECTION TO CLAIM OF ACURA
RDG-1 FINANCIAL SERVICES, CLAIM
NUMBER 7
3-5-19 [50]

8. 16-91052-D-13 SUDESH/RIAA NARAYAN OBJECTION TO CLAIM OF AMERICAN
RDG-2 HONDA FINANCE CORPORATION,
CLAIM NUMBER 8
3-5-19 [53]

9. 17-90869-D-13 KAY PARKER
18-9005
PARKER V. MID VALLEY
FINANCIAL, INC. ET AL

MOTION TO COMPEL
3-11-19 [50]

Tentative ruling:

This is the motion of defendant Mid Valley Services, Inc. ("Mid Valley") to compel further responses to 22 special interrogatories served on the plaintiff on January 9, 2019, and for an award of costs and attorney's fees. The plaintiff has filed a statement of non-opposition. For the following reasons, the motion will be granted in part.¹

Although responses to the interrogatories were due more than two months ago (on February 11, 2019), the plaintiff had, as of the filing of the motion and, apparently, as of the date of this writing, provided nothing to Mid Valley except the usual boilerplate objections - not calculated to lead to the discovery of admissible evidence, information equally available to the propounding party, attorney-client and work product privileges (with no privilege logs), and the ever-present "vague, oppressive, and burdensome." These objections were served on February 18, 2019, after the plaintiff's attorney had requested and been granted a one-week extension. There followed several email exchanges between counsel, which have thus far had no effective result. Throughout, the plaintiff's counsel continued to claim they were "working on it" and just needed more time.²

In response to this motion to compel, the plaintiff filed this notice of non-opposition:

Please take notice that Debtor and Plaintiff KAY M. PARKER (hereinafter, "Plaintiff"), through her counsel of record Duncan McGee Nefcy, Esq., hereby files this non-opposition to Defendant MID VALLEY SERVICES INC.'s (hereinafter, "Defendant") Motion to Compel. Due to Plaintiff's recent eye surgery, they were unable to provide Defendant with timely responses. Plaintiff and her Counsel wish not to force the Court to expend any further time or resources on this matter and therefore file this non-opposition. Plaintiff will provide Defendant with supplemental responses to Defendant's Special Interrogatories.

Parker's Notice, filed April 1, 2019, at 2:2-9. This notice is disheartening at best. The issue of the plaintiff's eye surgery was first raised in her counsel's February 21 email, almost two months ago. She has provided no information as to the nature of the difficulty or as to when it is expected to resolve sufficiently to enable her to provide complete responses to the interrogatories, if it has not already resolved. The court would have expected to see, in response to the motion, that complete responses have already been provided, or at the very least, a deadline by which the plaintiff proposes to provide them.

The court concludes the debtor has been dilatory in responding to the interrogatories, without satisfactory excuse. The court has reviewed the interrogatories and finds they are within the scope of proper discovery, as outlined in Fed. R. Civ. P. 26(b)(1), incorporated herein by Fed. R. Bankr. P. 7026. Accordingly, the court will grant the motion in part and require the plaintiff to serve on the defendant's counsel substantive, complete, and verified responses to the special interrogatories within 10 days from the date of the order on this motion.³ The court will defer a ruling on Mid Valley's request for fees and costs

to the time of trial.

The court will hear the matter.

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- 1 As a preliminary matter, the court draws Mid Valley's counsel's attention to a number of procedural defects in the moving papers. There is no motion, only a notice of motion, whereas under the court's local rules, there must be a motion and a separate notice of hearing. The moving papers do not include a docket control number, as required by local rule. The notice of hearing does not state whether written opposition is required, and if so, when it is due and what the consequences are for failure to file timely written opposition. The proofs of service are attached to the individual documents, rather than being filed separately with their own caption, as required by local rule.
 - 2 Near the outset, on February 21, Mid Valley's counsel emailed the plaintiff's counsel that if substantive supplemental responses were not received by February 25, his firm would file a motion to compel. The plaintiff's counsel responded, "We are working on getting substantive responses to you. I'd prefer that you follow the appropriate meet and confer requirement before filing a motion to compel." Mid Valley's Ex. B, p. 1.

It appears neither party was aware of this court's standards for the meet and confer requirement, as set forth in In re Sanchez, 2008 Bankr. LEXIS 4239, *3-4, 2008 WL 4155115 (Bankr. E.D. Cal. 2008), as there is no evidence of an attempt to actually meet, either in person or by telephone. Instead, the entire exercise was conducted by email. Despite this apparent non-compliance with Sanchez, the court intends to grant this motion in part, because the court has found and discussed in previous rulings in this and the other adversary proceedings a pattern of delay on the part of the plaintiff the court finds to be unexcused. To permit further delay by the plaintiff would be unfair to Mid Valley. Both parties are, however, encouraged to comply with the Sanchez standards before filing future motions, as the court intends to strictly enforce them.

- 3 The court will exclude from the order Special Interrogatory No. 10, which requests all facts supporting the plaintiff's contention that Mid Valley's trustee's sale of the property violated the automatic stay. The court has already ruled on that issue.

10. 17-90869-D-13 KAY PARKER
18-9005
PARKER V. MID VALLEY
FINANCIAL, INC. ET AL

MOTION BY DUNCAN M. NEFCY TO
WITHDRAW AS ATTORNEY
3-8-19 [46]

Tentative ruling:

This is the motion of Mellen Law Firm to withdraw as counsel for the debtor in her pending chapter 13 case and the three adversary proceedings associated with it.¹ Defendant Mid Valley Services, Inc. ("Mid Valley") has filed opposition; the debtor has not.² As for the debtor, the court is not satisfied proper notice was given;³ thus, the court will entertain the debtor's position on the motion at the hearing. If the debtor is not present, the court will expect counsel to advise the court

whether counsel is aware of any position the debtor has expressed on the motion. The court intends to continue the hearing to require the following.

First, the moving party has not made a sufficient record for the granting of the motion. The motion states that Mellen Law Firm seeks to withdraw as attorney for the debtor in the chapter 13 case and all adversary proceedings on the ground of an irretrievable breakdown of the attorney-client relationship. It adds that the firm has taken reasonable steps to avoid reasonably foreseeable prejudice to the debtor by repeatedly attempting to resolve the issues underlying the breakdown. However, the moving party has submitted no evidence of any of this. The only supporting declaration is that of a law clerk with the firm, who testifies that on February 27, 2019, she spoke by phone with the debtor and confirmed the debtor's address. The law clerk testifies: "I reminded [the debtor] that Matthew Mellen intended to move to be relieved as counsel. We spoke for several minutes after that." Fitzpatrick Decl., filed March 8, 2019, at 2:9-10.

There is no evidence in this declaration of the breakdown of the attorney-client relationship or of attempts to repair it. The court is fully aware of the difficulties of presenting such evidence, in light of the attorney-client privilege, but a declaration of the attorney who has worked with the debtor will be required. It will need to be sufficient to comply with LBR 2017-1(e) and to provide a basis for withdrawal under Rule 1.16 of the Rules of Professional Conduct.

Mid Valley argues that a breakdown in the attorney-client relationship is not one of the grounds for withdrawal listed in the rule. Thus, Mid Valley seems to suggest counsel should be required to identify which of the listed grounds applies here. Depending on the ground or grounds, that may be going too far, as, for example, with Rule 1.16(b)(3), where "the client insists that the lawyer pursue a course of conduct that is criminal or fraudulent." The court will require instead admissible evidence that grounds for withdrawal exist under the rule, with reference to particular listed grounds if appropriate.

The court intends to continue the hearing to give the moving party an opportunity to submit such evidence, and will also require counsel to file, in the parent case and each of the adversary proceedings, a statement pursuant to Fed. R. Bankr. P. 2016(b), as required by § 329(a) of the Bankruptcy Code. Once counsel has filed these statements and made a proper showing of a sufficient basis to permit withdrawal, and assuming it appears there will be no undue prejudice to the debtor, the court is inclined to grant the motion.

Mid Valley has shown no basis to force counsel to continue its representation of the debtor. The court sympathizes with Mid Valley's difficulty in obtaining appropriate responses to its discovery requests. However, Mid Valley has submitted no authority supporting any basis for a non-client to require continued representation.⁴ There are other remedies available for recalcitrance in responding to discovery requests, including terminating sanctions in the event of extreme resistance, and the court will allow the discovery disputes in the adversary proceedings to play out as they otherwise would.

In the meantime, the debtor's counsel is reminded that his representation continues until he is relieved by court order (LBR 2017-1(e)), and he will need to act accordingly.

The court will hear the matter.

- 1 The court notes that the debtor has other counsel in the parent case. The court considers this motion in the parent case because Mellen Law Firm has expressly requested it. The ruling will have no effect on the debtor's other counsel in the parent case.
- 2 Mid Valley filed opposition only in AP No. 18-9005 and not in the parent case or the other two adversary proceedings. For the sake of convenience, however, the court will incorporate this ruling in the parent case and the other adversary proceedings, even though it addresses Mid Valley's opposition.
- 3 The notice of hearing purported to require a written response 14 days prior to the hearing date; however, the moving party gave only 27 days' notice of the hearing date, rather than 28 days', as required by LBR 9014-1(f)(1) if written opposition is to be required. (The motion itself and the supporting declaration, which were served earlier, included the hearing date and time in the caption, but neither purported to require a written response in advance of the hearing.) In any event, the court generally does not favor (f)(1) notice of motions to withdraw because it puts the client in the position of having to determine where and how to file opposition to his or her own counsel's motion. In addition, the motion and supporting declaration were served on the debtor by certified mail, whereas service on an individual must be by first-class mail. See Fed. R. Bankr. P. 7004(b)(1) and preamble to Rule 7004(b).
- 4 Mid Valley refers to the debtor's counsel's stated "intention and willingness to comply with discovery" and to his "duty to fulfill his discovery obligations in a manner that is not prejudicial to Mid Valley." Mid Valley's Opp., filed April 4, 2019, at 2:6-7, 4:12-13. Discovery obligations fall on the client, not the attorney, who may believe in the client's "intention and willingness" to comply but may not be in a position to guarantee it.

11. 17-90869-D-13 KAY PARKER
18-9016
DEOL V. PARKER

MOTION BY MATTHEW MELLEN,
DUNCAN M. NEFCY TO WITHDRAW AS
ATTORNEY
3-8-19 [50]

**ADVERSARY PROCEEDING CLOSED:
12/19/2018**

Tentative ruling:

This is the motion of Mellen Law Firm to withdraw as counsel for the debtor, who is the defendant in this adversary proceeding. The court incorporates herein by this reference its ruling on Mellen Law Firm's motion to withdraw, as filed in AP No. 18-9005, also on this calendar.

The court will hear the matter.

12. 18-90169-D-13 DANNY/BECKY CALDWELL MOTION TO MODIFY PLAN
BSH-1 3-4-19 [60]
13. 18-90671-D-13 WILLIAM LEMMONS MOTION TO CONFIRM PLAN
DCJ-3 3-4-19 [77]
14. 18-90173-D-13 GREGORY/KAREN MARIANI MOTION TO MODIFY PLAN
JAD-3 3-8-19 [46]
15. 18-90876-D-13 LEONARDO/MELISSA JOSEF CONTINUED MOTION TO CONFIRM
PLG-5 PLAN
1-25-19 [42]

16. 18-90876-D-13 LEONARDO/MELISSA JOSEF CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
1-7-19 [24]

17. 19-90179-D-13 ROBERT/ROBIN SMITH MOTION TO CONFIRM PLAN
JAD-1 3-11-19 [9]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties served the IRS, which they scheduled as holding a priority claim for \$15,000, at the address of the Franchise Tax Board and not at its own address; thus, they failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(9); (2) the moving parties failed to serve the creditor filing Claim No. 3 at the address on its proof of claim, as required by Fed. R. Bankr. P. 2002(g); and (3) the dividend as stated in the proposed plan differs from the one stated in the motion and supporting declaration.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

18. 19-90086-D-13 CARL ALMQUIST MOTION TO VALUE COLLATERAL OF
BSH-1 TRAVIS CREDIT UNION
3-20-19 [15]

Final ruling:

This is the debtor's motion to value collateral of Travis Credit Union. The motion will be denied because the notice of hearing gives conflicting information about how to oppose the motion. First, it states that "[n]otice is provided pursuant to Local Rule 9014-1(f)(2) - no written opposition is required." Debtor's Notice of Hearing, filed March 20, 2019, at 1:25-26. It adds, "Opposition, if any, shall be presented at the hearing on the motion." Id. at 1:27. However, the notice later states, "Failure to file a timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition." Id. at 2:3-4.

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

19. 18-90498-D-13 DUSTY/MARGARET RHODES OBJECTION TO CLAIM OF CREDIT
RDG-3 FIRST, N.A., CLAIM NUMBER 22-1
3-14-19 [35]
20. 19-90101-D-13 WILLIAM/BRENDA SCHWOLOW OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
3-25-19 [19]
21. 19-90101-D-13 WILLIAM/BRENDA SCHWOLOW OBJECTION TO CONFIRMATION OF
RPZ-1 PLAN BY CITIMORTGAGE, INC. ASF
GSMPS MORTGAGE LOAN TRUST
2005-RP2
3-27-19 [22]
22. 18-90424-D-13 TONY HANA MOTION FOR RELIEF FROM
BPC-1 AUTOMATIC STAY AND/OR MOTION
DIGITAL FEDERAL CREDIT UNION FOR RELIEF FROM CO-DEBTOR STAY
VS. 4-2-19 [44]

23. 17-90869-D-13 KAY PARKER

MOTION BY DUNCAN M. NEFCY TO
WITHDRAW AS ATTORNEY
3-8-19 [128]

Tentative ruling:

This is the motion of Mellen Law Firm to withdraw as counsel for the debtor in this chapter 13 case. The court incorporates herein by this reference its ruling on Mellen Law Firm's motion to withdraw, as filed in AP No. 18-9005, also on this calendar.

The court will hear the matter.

24. 17-90869-D-13 KAY PARKER
19-9004
PARKER V. DEOL ET AL

MOTION BY DUNCAN M. NEFCY TO
WITHDRAW AS ATTORNEY
3-8-19 [23]

Tentative ruling:

This is the motion of Mellen Law Firm to withdraw as counsel for the debtor, who is the plaintiff in this adversary proceeding. The court incorporates herein by this reference its ruling on Mellen Law Firm's motion to withdraw, as filed in AP No. 18-9005, also on this calendar.

The court will hear the matter.

25. 19-90077-D-13 ANGEL MEDRANO
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-25-19 [29]

26. 19-90086-D-13 CARL ALMQUIST
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-25-19 [19]

27. 19-90068-D-13 CAROL MOHR
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-25-19 [17]