

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Modesto, California

April 26, 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.	14-91301-D-13	DIANA CAMPANELLA	MOTION TO MODIFY PLAN
	CJY-2		3-16-16 [49]

**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 attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

2. 13-90202-D-13 ERIC/TINA HANSEN  
CJY-4

MOTION TO MODIFY PLAN  
3-9-16 [95]

**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 attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

3. 12-92505-D-13 DOLORES THOMPSON  
DEF-10

MOTION TO MODIFY PLAN  
2-29-16 [172]

**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 attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

4. 11-93711-D-13 JEFFERY/YOKO MCWILLIAMS  
CJY-2

MOTION TO MODIFY PLAN  
3-17-16 [41]

**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 attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

5. 15-91217-D-13 HEATH/TIFFANY GRIGSBY  
MSM-1

MOTION TO VALUE COLLATERAL OF  
WARREN FEDERAL CREDIT UNION  
3-28-16 [33]

**Final ruling:**

This is the debtors' motion to value collateral of Warren Federal Credit Union. The motion will be denied for the following reasons. First, the moving parties used a docket control number, MSM-1, that has been used for a prior motion in this case (a motion that was denied), contrary to LBR 9014-1(c) (3). They also titled the notice of hearing of the present motion as "Amended Notice . . . ," indicating an original notice of hearing of this motion had been filed and served, whereas there is no such original notice on file. Second, the proof of service does not clearly indicate the manner of service, and as such, the court cannot conclude that service was made in strict compliance with Fed. R. Bankr. P. 7004(b) (3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Credit Union (1) at a street address to the attention of an agent for service of process; and (2) at a post office box address to the attention of a managing agent. In the text above the name and address listings, the proof of service states in bold type: "In accordance with Bankruptcy Rule 7004(h) service of process was made by certified mail to an officer of the institution as identified below." Thus, it appears the Credit Union was served by certified mail, whereas service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, such as the Credit Union, must be by first-class mail. Fed. R. Bankr. P. 7004(b) (3).

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

6. 11-94222-D-13 SHELLEY SHAHEN  
DCJ-5

CONTINUED MOTION TO MODIFY PLAN  
12-22-15 [95]

7. 16-90227-D-13 NICHOLAS MCFADDEN  
ADR-1  
LEE PORTER VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-29-16 [8]

**Tentative ruling:**

This is Lee Porter's (the "Movant") motion for relief from stay. The Movant asserts, and it is not disputed, that the debtor has only a possessory interest in the property as a result of a pre-petition lease between the debtor and the moving party, which lease terminated pre-petition. Accordingly, cause exists for relief from stay under Bankruptcy Code § 362(d) (1).

As Movant has established that the lease between the debtor and the Movant was terminated pre-petition and the debtor has only a possessory interest in the property, relief from stay will be granted under Code § 362(d) (1) by minute order.

The court will hear the matter.

8. 15-90341-D-13 PAMELA LOOPER MOTION TO MODIFY PLAN  
PGM-1 3-9-16 [35]

**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 attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

9. 13-90271-D-13 TIMOTHY/TINA SERROS MOTION FOR RELIEF FROM  
NLG-1 AUTOMATIC STAY  
SETERUS, INC. VS. 3-25-16 [32]

**Final ruling:**

This matter is resolved without oral argument. This is Seterus, Inc.'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 the creditor'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.

10. 11-92572-D-13 ERNEST/BARBARA CHISLEY MOTION TO MODIFY PLAN  
RLF-3 3-10-16 [66]

11. 11-92572-D-13 ERNEST/BARBARA CHISLEY MOTION FOR COMPENSATION FOR  
RLF-3 SHANE REICH, DEBTORS' ATTORNEY  
3-10-16 [68]

12. 16-90075-D-13 DANIEL JAMES AND PAULA OBJECTION TO CONFIRMATION OF  
APN-1 FOX-JAMES PLAN BY WELLS FARGO BANK, N.A.  
3-15-16 [27]

13. 16-90082-D-13 DAWN POWERS OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
3-29-16 [28]

**Final ruling:**

**This case was dismissed on March 30, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.**

14. 16-90084-D-13 JOHN/ESTHER MILSAP OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
3-29-16 [21]

15. 16-90084-D-13 JOHN/ESTHER MILSAP MOTION TO AVOID LIEN OF  
RLF-1 AMERICAN EXPRESS BANK, FSB  
3-26-16 [16]

**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. No appearance is necessary.**

16. 10-95089-D-13 ELLEENE/BRETT STONE MOTION FOR RELIEF FROM  
RLG-4 OBLIGATION TO FILE DOCUMENTS  
PURSUANT TO FRBP 7025  
3-22-16 [110]

**Final ruling:**

This is the joint debtor's notice of death of the debtor and motion to waive the requirement that the debtor file pre-discharge certificates. The motion is brought pursuant to Fed. R. Civ. P. 25(a), incorporated herein by Fed. R. Bankr. P. 7025 and 9014(c), and LBR 1016-1. The federal rule requires that service be made on the parties and the local rule requires service on the trustee, the United States Trustee, and all other parties in interest. Here, the moving party served only the trustee and the United States Trustee and failed to serve any creditors. The court will continue the hearing to May 10, 2016, at 10:00 a.m., the moving party to file a notice of continued hearing and serve it on all creditors in the manner provided by Fed. R. Bankr. P. 2002(g), including (g) (1) and (2). The hearing will be continued by minute order. No appearance is necessary.

17. 15-90499-D-13 KENNETH/TRACIE THORNE MOTION TO CONFIRM PLAN  
DEF-7 3-11-16 [140]

18. 16-90304-D-13 JOHN DEMING MOTION TO EXTEND AUTOMATIC STAY  
DCJ-1 4-12-16 [9]

19. 16-90209-D-13 PHINAS HATTON MOTION TO CONFIRM TERMINATION  
LMK-1 OR ABSENCE OF STAY  
4-7-16 [17]

20. 12-91015-D-13 GREGORY/DOLORES STEFFENS CONTINUED MOTION TO SUBSTITUTE  
CJY-2 DOLORES STEFFENS AS THE  
REPRESENTATIVE FOR GREGORY F.  
STEFFENS, MOTION TO EXCUSE  
DEBTOR GREGORY F. STEFFENS FROM  
COMPLETING THE 11 U.S.C.  
SECTION 1328 CERTIFICATE OR  
CERTIFICATE OF CHAPTER 13  
DEBTOR, ETC.  
3-8-16 [42]
21. 10-95062-D-13 JOVY BERINGUELA AND MOTION TO VALUE COLLATERAL OF  
CJY-2 CARMELA TACBAD BANK OF AMERICA  
4-5-16 [129]
22. 16-90288-D-13 KAL/DEBORAH KIRKLE MOTION TO EXTEND AUTOMATIC STAY  
DCJ-1 4-12-16 [9]
23. 16-90283-D-13 KIT JORY MOTION TO EXTEND AUTOMATIC STAY  
4-15-16 [15]

**Tentative ruling:**

This is the debtor's motion to extend the automatic stay. Although the notice of motion stated that parties wishing to oppose the motion must file a written response no less than 14 days prior to the hearing date, the moving party gave only 13 days' notice of the hearing; thus, no written opposition was necessary and the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

First, the moving party served only Caliber Home Loans and no other creditors. Thus, if the court were inclined to grant the motion, it would be granted only as to Caliber Home Loans and not as to all creditors, as requested by the debtor. However, the court is not persuaded Caliber Home Loans was served in a manner designed to ensure that notice was received. The moving party utilized a different address for service of this motion from the address at which he scheduled Caliber in his prior case and which he listed on his master address list in this case. In addition, he failed to serve Caliber through the attorney who appeared on its behalf in the prior case. Thus, absent an appearance on behalf of Caliber at the hearing on this motion, the court would not be inclined to grant the motion.

Second, the court finds that the debtor has failed to demonstrate that this case has been filed in good faith, as required by § 362(c)(3)(B). In his supporting affidavit, the debtor states he allowed his prior case to be dismissed because he did not understand the paperwork involved in the bankruptcy process and did not understand the claims process and his right to object to claims. The debtor states he has since sought legal advice and, although he cannot afford legal representation, he obtained the information he needs "to create and show the ability to complete and fully perform a Chapter 13 plan." Debtor's Affidavit, filed April 15, 2016, at 2. He adds that his financial situation has improved as he has returned to his "full earning capacity" (*id.*) after a work injury.

The debtor's prior case was dismissed because he failed to pay the second installment of his filing fee when due. By that time, the trustee had filed a motion to dismiss for failure to make plan payments. It appears from a comparison of the debtor's Schedules I in the two cases that his income has in fact increased significantly - his gross income has increased by almost \$1,900 per month. However, a comparison of the schedules in the two cases and a review of the claims filed in the prior case raise other concerns.

In the prior case, the debtor scheduled two vehicles that are not scheduled in the present case, and in the present case, he scheduled two vehicles that were not scheduled in the prior case. Thus, apparently, the debtor disposed of two vehicles and acquired two other vehicles between the time his prior case was dismissed, on January 20, 2016, and the time he filed this new case, on March 31, 2016. A proof of claim filed in this new case has as an attachment a Retail Installment Sale Contract demonstrating that the debtor purchased a 2012 Toyota Prius on February 12, 2016 for \$16,757, making a \$1,500 down payment and incurring an obligation to pay \$494 per month for 48 months. Although the debtor scheduled this and another car payment - for \$400 per month - on his Schedule J, he did not schedule either of the creditors to whom these debts are owed and did not include either on his master address list. He also failed to include on the master address list Stanislaus County Child Support, listed on the debtor's Schedule E/F as being owed \$4,320.

In his statement of financial affairs in the present case, the debtor failed to disclose any gifts or other transfers of property within the two years prior to the filing of the case or any repossessions or losses from fire, theft, or gambling within the prior one year. Thus, he failed to disclose that he disposed of the two vehicles scheduled in the prior case but not in this case. In his statement of affairs in this case, the debtor testified he has had no income from any source during this year or the prior two years, whereas in his statement of affairs in the prior case, he testified he had \$52,760 in employment income in 2015 and \$133,500 in the prior two years.

On his Schedule D in the prior case, the debtor listed two pawn shops to which he owed \$10,000 and \$3,000, respectively, secured by firearms and jewelry, whereas neither of those creditors was scheduled in this case. Thus, the debtor apparently paid off those creditors, along with two others listed on his Schedule F in the prior case, at \$3,896 and \$2,690, who are not listed in this case, either while the prior case was pending or between the dismissal of that case and the filing of this one. However, he failed to disclose any payments to creditors within the 90 days prior to the filing of this case. Finally, the debtor did not schedule either the IRS or the Franchise Tax Board in either case, but those creditors filed proofs of claim in the prior case, the IRS for \$106,242 priority and \$62,374 general (claim filed December 3, 2015), and the Franchise Tax Board for \$1,190 priority and \$1,508 general (amended claim filed January 19, 2016).

The court concludes from the foregoing that the debtor's schedules and statement of affairs filed in this case are not true and complete. Although this is not among the grounds on which a case is presumptively not filed in good faith, under § 362(c)(3)(C) of the Code, that does not exclude it as a ground for finding lack of good faith. Section 362(c)(3)(B) requires a debtor seeking to extend the stay to demonstrate that the new case was filed in good faith. If any of the factors listed in § 362(c)(3)(C) is present, the case is presumptively not filed in good faith and the debtor's burden of proof to overcome that presumption is elevated to clear and convincing evidence. If none of the § 362(c)(3)(C) factors is present, that does not necessarily mean the case was filed in good faith; it only means the presumption of lack of good faith does not arise. The debtor must nevertheless demonstrate, albeit only by a preponderance of the evidence, that the new case was filed in good faith.

The presence of any of the above-listed events gives rise to a rebuttable presumption of bad faith. If the presumption of bad faith arises, the movant must rebut the presumption by "clear and convincing evidence to the contrary." In contrast, if the court finds there is no presumption of bad faith arising under § 362(c)(3)(C)(i) or (ii), then the burden of establishing good faith is reduced to preponderance of the evidence.

In re Montoya, 342 B.R. 312, 316 (Bankr. S.D. Cal. 2006) (citations omitted); see also In re Elliott-Cook, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006).

In making a determination of good faith or lack of good faith for purposes of § 362(c)(3)(B), the courts look at the totality of the circumstances (Montoya, 342 B.R. at 317), including whether the debtor misrepresented facts in his petition or plan. Id. In this case, the following factors persuade the court that this case was not filed in good faith: (1) the debtor's failure to disclose in this case that he disposed of two vehicles, either during the prior case or in the 10 weeks between the dismissal of that case and the filing of this one; (2) his incurring of a new \$17,121 debt with a \$494 per month payment obligation roughly three weeks after his prior case was dismissed for failure to pay a \$77 filing fee installment; (3) his failure to schedule his two car lenders in this case or to list them on his master address list; (4) his apparent decision to pay off four creditors listed in his prior case as being owed a total of almost \$20,000; (5) his failure to disclose those payments in this case; (6) his failure to disclose his income for this year and the past two years in this case; and (7) his failure to schedule the IRS and Franchise Tax Board as creditors in this case.

Accordingly, the motion will be denied. The court will hear the matter.