

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

May 21, 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.	18-20004-D-13	JALON/MIRANDA HARRISON	MOTION TO MODIFY PLAN
	JCK-6		4-10-19 [93]

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.

2. 19-21005-D-13 ELINOR BANKS
LRR-1

MOTION TO CONFIRM PLAN
4-11-19 [26]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(9). The debtor listed Wells Fargo Dealer Services on her Schedule D as secured by two different vehicles. She listed the creditor at two different addresses - one for each of the loans. The creditor has filed a proof of claim for the debt secured by one of the vehicles but not the other. The debtor served the creditor at the address on its proof of claim, as required by Fed. R. Bankr. P. 2002(g)(1), but failed to serve the creditor at the address listed on her Schedule D for the debt secured by the other vehicle, as required by Fed. R. Bankr. P. 2002(g)(2).

As a result of this service defect, the motion will be denied and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

3. 19-21005-D-13 ELINOR BANKS
LRR-2

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH POTENTIAL
SETTLEMENT AGREEMENT FOR
DEBTOR'S LAWSUIT
4-11-19 [32]

Final ruling:

This is the debtor's motion for approval of a prospective compromise. The motion will be denied for several reasons. First, the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(3). The debtor listed Wells Fargo Dealer Services on her Schedule D as secured by two different vehicles. She listed the creditor at two different addresses - one for each of the loans. The creditor has filed a proof of claim for the debt secured by one of the vehicles but not the other. The debtor served the creditor at the address on its proof of claim, as required by Fed. R. Bankr. P. 2002(g)(1), but failed to serve the creditor at the address listed on her Schedule D for the debt secured by the other vehicle, as required by Fed. R. Bankr. P. 2002(g)(2).

Second, the notice of hearing, although it refers to a compromise in the title, states in the cautionary language the steps to take "if you do not want the Court to Confirm the Chapter 13 Plan."

Third, there is no settlement or compromise, and therefore, the motion is premature. The exhibits to the motion are (1) a complaint filed in September of 2017 by the debtor and three other individuals against the County of San Joaquin and others for wrongful termination; and (2) a petition for writ of administrative mandate filed in March of this year by the debtor against the Unemployment Insurance Appeals Board for the County of San Joaquin as real party in interest. The motion and the debtor's supporting declaration make very clear there is no pending compromise or settlement of either action. Instead, the motion describes "the proposed compromise" as "a potential settlement agreement concerning the two lawsuits . . ." (Debtor's Motion, filed April 11, 2019, at 2:1-3), and states the purpose of the motion as follows:

This Motion to compromise is to secure that once a settlement agreement is secured by the Debtor that this compromise shall pay the bankruptcy

estate the sum of one hundred percent (100%) to U.S. Bank Home Mortgage listed under the secured claims of the chapter 13 plan and will also pay the sum of one hundred (100%) to Class 7 unsecured creditor claims listed in the chapter 13 plan as well.

Id. at 2:9-13.

The debtor prays for "an order providing that: (1) any potential settlement agreement is approved and the Debtor is authorized to enter into an[d] act in accordance herewith; (2) the compromise of any potential settlement agreement is approved as fair and equitable"; that the debtor be authorized to sign all necessary documents; and for a waiver of the stay of effectiveness of the order. She adds in her declaration that "negotiation, documentation, and execution of any potential settlement agreement is in the best interest of the bankruptcy estate and all secured and unsecured creditor claims. This Motion will also insure that continued communication between all parties is allowed and protected in order to benefit the bankruptcy estate and the success of the Chapter 13." Debtor's Decl., filed April 11, 2019, at 2:4-8.

Plainly, there is no compromise here for the court to consider. The debtor has submitted no authority, and the court is aware of none, for the proposition that the court has the power to approve a compromise in advance of any compromise being reached. The proposition is directly contrary to the principle that the court must evaluate any proposed compromise in light of four factors, set forth in In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988), which require the court be made aware of the specific terms of the proposed compromise.

Even an actual settlement by a bankruptcy trustee - or in this case, the debtor - would be insufficient. "It is clear that there must be more than a mere good faith negotiation of a settlement by the trustee in order for the bankruptcy court to affirm a compromise agreement. The court must also find that the compromise is fair and equitable." In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The trustee has the burden of persuading the court the compromise is fair and equitable. Id.

[T]here can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.

Id. at 1382, quoting Protective Committee for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968). Obviously, the court cannot apply the factors to a compromise that does not exist. The court has no power to determine in advance that any compromise the debtor may enter into in the future will meet the fair and equitable standard.

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

4. 19-21005-D-13 ELINOR BANKS OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
4-8-19 [21]

Final ruling:

This is the trustee's objection to the debtor's claim of exemption of an interest in a state court lawsuit. The objection is based on the debtor's failure to demonstrate that the amount claimed as exempt is necessary for the support of the debtor or a spouse or dependent of the debtor. On April 11, 2019, the debtor filed an amended Schedule C on which she removed the claim of exemption of an interest in the lawsuit. As a result of the filing of the amended Schedule C, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

5. 19-21406-D-13 YONSON GESCAT OBJECTION TO CONFIRMATION OF
PLAN BY SPECIALIZED LOAN
SERVICING, LLC
3-28-19 [21]

Final ruling:

The objection was withdrawn by moving party. Matter removed from calendar.

6. 19-20016-D-13 GARY BITZ MOTION TO CONFIRM PLAN
HWW-1 3-22-19 [22]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(9). The moving party failed to serve Avant, Inc., by far the largest scheduled unsecured creditor, at all.

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

7. 19-20016-D-13 GARY BITZ OBJECTION TO CLAIM OF INTERNAL
HWW-2 REVENUE SERVICE, CLAIM NUMBER 5
4-20-19 [31]

Tentative ruling:

This is the debtor's objection to the claim of the IRS. The objection was noticed under LBR 3007-1(b)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The objection is supported by the debtor's declaration, in which he states he "[has] not been required to file tax returns under applicable law for all taxable periods ending during the 4-year period ending on [the petition date], and none have

11. 19-21036-D-13 JULIE/GREGORY RENWICK OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
4-22-19 [23]
12. 18-27745-D-13 JUAN/MARIA SALAS ORDER TO SHOW CAUSE
4-24-19 [70]
13. 19-20749-D-13 MIKE/THELMA DOUGHERTY OBJECTION TO DEBTORS' CLAIM OF
RDG-1 EXEMPTIONS
4-8-19 [35]
- Final ruling:**
- This is the trustee's objection to the debtors' claim of exemption of \$11,800 in business inventory pursuant to Cal. Code Civ. Proc. § 704.060. On April 22, 2019, the debtors filed an amended Schedule C on which they reduced the amounts claimed under that code section. The amended Schedule C appears to be a copy of a copy, at best, and is therefore difficult to read precisely. It is sufficiently different from the original, however, as regards the amounts claimed under the particular code section, that as a result of the filing of the amended Schedule C, the present objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.
14. 18-21661-D-13 GERARDO LARA AND NORMA OBJECTION TO CLAIM OF PACIFIC
RDG-2 CAMARENA ENTERPRISE BANK, CLAIM NUMBER
25
4-12-19 [134]

15. 18-21661-D-13 GERARDO LARA AND NORMA OBJECTION TO CLAIM OF PACIFIC
RDG-3 CAMARENA ENTERPRISE BANK, CLAIM NUMBER
26
4-12-19 [137]
16. 18-21661-D-13 GERARDO LARA AND NORMA OBJECTION TO CLAIM OF BLUEGREEN
RDG-4 CAMARENA CORPORATION, CLAIM NUMBER 27
4-12-19 [140]
17. 16-28163-D-13 KAREN KHAN MOTION TO MODIFY PLAN
JCK-4 4-12-19 [66]
18. 19-21463-D-13 PATRICIA MADRID MOTION TO CONFIRM PLAN
HWW-2 4-15-19 [22]

Tentative ruling:

This is the debtor's motion to value collateral of Toyota Financial Services. It appears from the creditor's opposition and its proof of claim that the actual creditor is Toyota Motor Credit Corporation ("Toyota"). As indicated, Toyota has filed opposition. For the following reasons, the motion will be granted.

The collateral is a 2013 Chrysler Town & Country Touring Minivan. The debtor testifies that in her opinion, the replacement value of the vehicle when this case was filed was \$8,830. She bases this on the Kelley Blue Book range of values for a similar vehicle if purchased from a dealer in the area covered by the debtor's zip code. The "fair market range" is \$7,267 to \$10,392; the debtor's \$8,830 figure is the midpoint between those figures and is what Kelley Blue Book calls the "fair purchase price."

Toyota, on the other hand, claims the replacement value is \$10,093.54, based on the NADA Guide; Toyota adds that this figure "includes the \$1,143.54 cost of the optional Service Contract (executory contract) financed during the initial purchase transaction" Toyota's Opp., filed May 2, 2019, at 2:17-18. Deducting that \$1,143.54 cost from the value Toyota alleges as the replacement value, \$10,093.54, leaves \$8,950, which is, in fact, the "Clean Retail" value of the vehicle according to the NADA Guide printout filed by Toyota as an exhibit. That value is only \$120 higher than the debtor's alleged value.

Toyota has submitted no authority for the proposition that the cost of the optional service contract is appropriately included in the replacement value of the vehicle, under § 506(a)(2) of the Bankruptcy Code. This court agrees with the court in In re Jones, 583 B.R. 749, 755-57 (Bankr. W.D. Wash. 2018), that under the reasoning in AmeriCredit Fin. Servs. v. Penrod (In re Penrod), 611 F.3d 1158, 1161-64 (9th Cir. 2010) (negative equity not included for purpose of § 506(a) valuation), the cost of the service contract is not appropriately included.

As for the \$120 difference between the debtor's Blue Book valuation and Toyota's NADA Guide valuation without the cost of the service contract, the court will adopt the debtor's valuation as there is no indication Toyota's was tailored to the area of the debtor's zip code. For these reasons, the motion will be granted.¹ The court will hear the matter.

¹ The court notes that Toyota has filed a separate statement of disputed material facts. It has not, however, requested an evidentiary hearing, and in any event, the primary issue in dispute here is an issue of law, not fact. The motion will therefore be decided on the evidence presented thus far.

20. 19-21463-D-13 PATRICIA MADRID MOTION TO VALUE COLLATERAL OF
HWW-4 BANK OF STOCKTON
4-20-19 [31]

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.

21. 19-21564-D-13 BENNY KLINE AND SHERRAL MOTION TO CONFIRM PLAN
JCK-2 THIERRY-KLINE
4-11-19 [15]

22. 19-21066-D-13 KRISTINA BOYD CONTINUED OBJECTION TO
MBW-1 CONFIRMATION OF PLAN BY SAFE
CREDIT UNION
4-2-19 [15]

23. 19-21066-D-13 KRISTINA BOYD OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
4-22-19 [24]

24. 16-21375-D-13 ALBERTO VAZQUEZ-GARCIA MOTION FOR RELIEF FROM
EMM-1 AUTOMATIC STAY
CASCADE FUNDING MORTGAGE 4-18-19 [62]
TRUST 2017-1 VS.

Final ruling:

This matter is resolved without oral argument. This is Cascade Funding Mortgage Trust 2017-1'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 property is not necessary for an effective reorganization. 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. 13-35379-D-13 STEVEN/SOCORRO JOSEPH MOTION TO MODIFY PLAN
JCK-3 4-10-19 [40]

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.

26. 18-23785-D-13 CHERYL CHAMBERLAIN MOTION TO MODIFY PLAN
HWW-2 4-15-19 [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.

27. 19-21092-D-13 PATRICIA BOWIE OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
4-22-19 [24]

Final ruling:

This case was dismissed on April 24, 2019. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

28. 19-21406-D-13 YONSON GESCAT
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-29-19 [29]

Final ruling:

This is the trustee's objection to confirmation of the debtor's originally-filed chapter 13 plan. On May 7, 2019, the debtor filed an amended plan (although without 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.

29. 19-22750-D-13 DEBRA ROY
MKM-1

MOTION TO EXTEND AUTOMATIC STAY
5-6-19 [12]

30. 19-21461-D-13 OLIVIA MERCADO
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-29-19 [14]

31. 16-26384-D-13 RAUL BOTELLO
JCK-4

MOTION TO REFINANCE
5-7-19 [55]

32. 19-20292-D-13 KIM WALKER
RDG-1

CONTINUED AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
3-11-19 [22]

33. 19-22818-D-13 ADRIAN GESMUNDO
PGM-1

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
5-10-19 [11]