

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

June 4, 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.	18-23903-D-13	LARRY SWANSON	MOTION FOR RELIEF FROM
	NLL-1		AUTOMATIC STAY AND/OR MOTION
	U.S. BANK, N.A. VS.		FOR RELIEF FROM CO-DEBTOR STAY
			4-26-19 [63]

**Final ruling:**

This matter is resolved without oral argument. This is U.S. Bank, N.A.'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 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 as to the debtor and any co-debtor by minute order. There will be no further relief afforded. No appearance is necessary.

2. 19-21406-D-13 YONSON GESCAT OBJECTION TO DEBTOR'S CLAIM OF  
RDG-2 EXEMPTIONS  
4-29-19 [32]

**Final ruling:**

This is the trustee's objection to the debtor's claim of exemption of certain assets under Cal. Code Civ. Proc. § 703.140(b)(1) and (5). The trustee contends the claimed exemptions exceed the total amount permitted under those subsections. On May 7, 2019, the debtor filed an amended Schedule C on which he reduced the total amount of the exemptions claimed under those subsections. 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.

3. 17-24412-D-13 JEANINE DAVIS MOTION TO MODIFY PLAN  
PGM-5 4-18-19 [165]

**The court will use this hearing as a status conference.**

4. 17-24412-D-13 JEANINE DAVIS MOTION FOR RELIEF FROM  
SSA-5 AUTOMATIC STAY AND/OR MOTION  
THOMAS AND FRANCES CASTANEDA FOR ADEQUATE PROTECTION  
FAMILY TRUST DATED APRIL 26, 5-6-19 [176]  
2012 VS.

**The court will use this hearing as a status conference.**

5. 17-24412-D-13 JEANINE DAVIS MOTION FOR COMPENSATION FOR  
SSA-6 STEVEN S. ALTMAN, CREDITOR'S  
ATTORNEY  
5-10-19 [185]

**The court will use this hearing as a status conference.**

6. 18-25917-D-13 DAVIE HUMPHREY MOTION TO CONFIRM PLAN  
MEV-3 4-20-19 [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 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. 19-22518-D-13 YVETTE ATLAS MOTION TO VALUE COLLATERAL OF  
JCK-1 OCWEN LOAN SERVICING  
4-25-19 [8]

**Final ruling:**

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Ocwen Loan Servicing 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 debtor's 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 Ocwen Loan Servicing's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

8. 18-26931-D-13 ERNEST BEZLEY CONTINUED MOTION FOR RELIEF  
NAR-1 FROM AUTOMATIC STAY  
JOY LYNETTE WORKMAN VS. 11-21-18 [12]

**Final ruling:**

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

9. 18-26931-D-13 ERNEST BEZLEY MOTION TO DISMISS ADVERSARY  
19-2043 NAR-1 PROCEEDING  
BEZLEY V. WORKMAN 4-22-19 [10]

**Final ruling:**

On April 22, 2019, at 11:50 a.m., the plaintiff filed a Notice of Dismissal Without Prejudice of Adversary Complaint Filed by Ernest James Bezley (the "Notice"). The same day, at 5:27 p.m., the defendant filed a motion to dismiss the adversary complaint, which, by a later-filed amended notice of hearing, was set for hearing at this date and time. As noted by the plaintiff, the Notice was filed "before service by defendant on plaintiff of either an answer or a motion for summary judgment." Notice, at 2:6-7. Thus, the Notice was filed within the terms of Fed. R. Civ. P. 41(a)(1)(A), incorporated herein by Fed. R. Bankr. P. 7041, and when the defendant's motion to dismiss was filed, the adversary proceeding was no longer pending. The motion to dismiss will therefore be denied as moot by minute order. No appearance is necessary.

10. 19-20233-D-13 ALFONSO PULIDO CONTINUED MOTION TO EXTEND  
GMW-1 AUTOMATIC STAY  
1-29-19 [15]

11. 19-20233-D-13 ALFONSO PULIDO MOTION TO CONFIRM PLAN  
GMW-3 4-19-19 [62]

**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.

12. 19-21036-D-13 JULIE/GREGORY RENWICK MOTION TO VALUE COLLATERAL OF  
PGM-1 TOYOTA FINANCIAL SERVICES  
4-24-19 [26]

**Tentative ruling:**

This is the debtors' 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 denied.

The collateral is a 2015 Toyota Camry. The debtors testify that in their opinion, the replacement value of the vehicle when this case was filed was \$12,200. They base this estimate solely on their familiarity with the condition of the car "and the general values of 2015 Toyota Camry's of this year, and with [their] particular options." Thus, their opinion, at least in part, is based on hearsay and is without foundation.

Toyota, on the other hand, claims the replacement value is \$17,333.53, based on the NADA Guide; Toyota adds that this figure "includes the \$808.53 cost of the optional Service Contract and GAP (executory contracts) financed during the initial purchase transaction . . . ." Toyota's Opp., filed April 29, 2019, at 2:17-19. Deducting that \$808.53 cost from the value Toyota alleges as the replacement value, \$17,333.53, leaves \$16,525, 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 \$4,325 higher than the debtors' alleged value. The debtors did not, apparently, start with either an NADA Guide or Kelley Blue Book valuation. It is impossible to determine how they arrived at their value.

Absent other evidence, the court might give sufficient weight to the debtors' testimony to grant the motion. Toyota's NADA Guide valuation, however, carries significantly greater weight. The court is not persuaded the relatively minor deficiencies in the car's appearance and radio reduce the value substantially, and in any event, the debtors have failed to demonstrate the amount by which the value should be reduced. The court concludes the debtors have failed to carry their burden of demonstrating that the value of the vehicle is any amount less than \$16,525.

Toyota has submitted no authority for the proposition that the cost of the optional service contract or the GAP 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 these contracts is not appropriately included.

Because the debtors have failed to satisfy their burden of proof, the motion will be denied. In the alternative, the court will grant the motion in part and value the vehicle, for purposes of the debtors' chapter 13 plan, at \$16,525, which is less than the full amount of Toyota's claim.

The court will hear the matter.

13. 19-21036-D-13 JULIE/GREGORY RENWICK MOTION TO VALUE COLLATERAL OF  
PGM-2 SANTANDER CONSUMER USA  
4-24-19 [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.

14. 16-21939-D-13 LARY/NENA ULEP MOTION TO SUBSTITUTE ATTORNEY  
5-8-19 [57]

15. 18-27740-D-13 HENRIETTA DEBROUWER MOTION TO CONFIRM PLAN  
MJD-2 4-23-19 [32]

**Final ruling:**

This is the debtor's motion to confirm a first amended chapter 13 plan. On May 14, 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.

16. 14-23548-D-13 CARL/BETTIE ALLEN MOTION TO MODIFY PLAN  
HWW-2 4-29-19 [60]

**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.

17. 19-20749-D-13 MIKE/THELMA DOUGHERTY CONTINUED MOTION TO CONFIRM  
CLH-1 PLAN  
3-1-19 [15]

18. 14-31860-D-13 JARED GOODRICH MOTION TO MODIFY PLAN  
MKM-3 4-25-19 [76]

**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.

19. 17-27365-D-13 VIJAYA/SAROJ GAUNDAR MOTION TO SUBSTITUTE ATTORNEY  
4-5-19 [32]

20. 19-21066-D-13 KRISTINA BOYD OBJECTION TO DEBTOR'S CLAIM OF  
RDG-2 EXEMPTIONS  
4-22-19 [21]

**Final ruling:**

**This Chapter 13 case was transferred to Dept. C, the Hon. Christopher Klein presiding. As such, this objection is continued to June 4, 2019 at 2:00 p.m. to be heard in Courtroom 33. No appearance is necessary.**

21. 18-21171-D-13 EVERETT MARSHALL AND MOTION TO SUBSTITUTE ATTORNEY  
LYNETTE HASAN-MARSHALL 5-8-19 [98]

22. 11-47081-D-13 ANA LEMOS CONTINUED MOTION TO DISMISS  
19-2032 TOG-1 ADVERSARY PROCEEDING  
LEMOS V. GILLIS 3-22-19 [12]

**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 filed opposition and both parties filed supplemental briefs. For the following reasons, the motion will be granted.**

**By her complaint in this adversary proceeding, the plaintiff claims the defendant committed legal malpractice in his representation of her in the chapter 13 case in which this adversary proceeding is pending. Specifically, she contends he filed a motion to "strip off" a second mortgage from the plaintiff's property against the wrong respondent - that is, against the entity that held the mortgage earlier, rather than the entity that held it when the motion was filed. As a**

result, the plaintiff claims, she was forced to pay off a second mortgage that would have been stripped off if the defendant had named the current holder of the deed of trust as the target of the motion.

The plaintiff completed her chapter 13 plan and received her discharge, and the case was closed, more than four years ago. All property of the bankruptcy estate not otherwise administered during the case was abandoned to the plaintiff, as the debtor, when the case was closed, on March 23, 2015. That is, there is no longer, and for over four years has not been, a bankruptcy estate insofar as the plaintiff or her property is concerned. The claims of the plaintiff's creditors have been discharged; they will not benefit from any recovery she obtains against the defendant.

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. Commr 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). The circumstances of this case are akin to those in In re Holcomb, 2018 Bankr. LEXIS 1256, \*16-19 (9th Cir. BAP 2018), and the court agrees with the Panel's analysis of the subject matter jurisdiction question in that case. The court concludes that, as in Holcomb, the plaintiff's claims do not "arise under" Title 11, do not "arise in" a case under Title 11, and are not "related to" a bankruptcy case. See Holcomb, 2018 Bankr. LEXIS 1256, at \*16-19; see also In re Stokes, 2013 Bankr. LEXIS 4654, \*14-22 (9th Cir. BAP 2013); Ross v. Yaspan, 2013 U.S. Dist. LEXIS 95710, \*4-10, 2013 WL 3448725 (C.D. Cal. 2013).

The cases cited by the plaintiff are readily distinguishable. The plaintiff relies primarily on Schultze v. Chandler, 765 F.3d 945 (9th Cir. 2014), and has taken a block quote from that decision that includes seven other case citations. The distinguishing factor is that in Schultze and the seven cases, the malpractice claim was against either a chapter 11 trustee, a professional employed by a chapter 11 trustee, or a professional employed by a debtor-in-possession or a creditors' committee, and concerned the defendant's conduct during the administration of the chapter 11 case. The plaintiff chose this quote from Schultze that, contrary to her position, clearly distinguishes the facts supporting jurisdiction from the facts in the present case.

A sine qua non in restructuring the debtor-creditor relationship is the court's ability to police the fiduciaries, whether trustees or debtors-in-possession and other court-appointed professionals, who are responsible for managing the debtor's estate in the best interest of creditors. The bankruptcy court must be able to assure itself and the creditors who rely on the process that court-approved managers of the debtor's estate are performing their work, conscientiously and cost-effectively. Bankruptcy Code provisions describe the basis for compensation, appointment and removal of court-appointed professionals, their conflict-of-interest standards, and the duties they must perform. See generally 11 U.S.C. §§ 321, 322, 324, 326-331.

Schultze, 765 F.3d at 949 (quoting In re Southmark Corp., 163 F.3d 925, 931 (5th Cir. 1999)).

In the present case, the defendant was not a fiduciary of the estate or creditors; his employment was not approved by the court; and there is no allegation that his conduct affected creditors as a whole or the estate. The facts of this



case are much more in line with those in Holcomb, where a debtor sued the attorney who represented her in a chapter 7 case, claiming she lost her residence at a court-ordered auction because the attorney had failed to give information about her prospective refinancing loan to the trustee's counsel or the court. The Panel cited and distinguished the Schultze decision.

Debtor's fraud/malpractice claims against Altagen could not have any conceivable effect on her estate. The claims belong to Debtor personally and are not property of her estate, creditors have been paid in full, debtor received her discharge, and the chapter 7 estate has been fully administered and closed. Regardless of whether Debtor is successful or not with her claims against Altagen, her estate would receive no assets. No administration would occur and no distributions would be made. In the end, the critical component of the Pacor test is not met here: "bankruptcy courts have no jurisdiction over proceedings that have no effect on the estate of the debtor." Accordingly, the bankruptcy court lacked subject matter jurisdiction over the underlying adversary proceeding.

In re Holcomb, 2018 Bankr. LEXIS 1256, at \*19 (citations omitted).

For the reasons stated, the motion will be granted and the adversary complaint will be dismissed without prejudice. The court will hear the matter.

23. 19-21286-D-13 JAMES AZEVEDO MOTION TO CONFIRM PLAN  
FF-2 4-26-19 [35]

Final ruling:

This is the debtor's motion to confirm a chapter 13 plan. The motion will be denied for the following reasons: (1) the proof of service evidences service of a "Chapter 13 Plan," whereas the plan filed with this motion is entitled "First Amended Chapter 13 Plan"; thus, the proof of service appears to evidence service of the original plan, not the amended plan; and (2) the captions of all the moving papers indicate the hearing will be held in the Modesto courthouse (although the notice of hearing refers to the Sacramento courthouse in the text (albeit with the wrong department)).

As a result of these proof of service and notice defects, the motion will be denied by minute order. No appearance is necessary.

24. 19-20791-D-13 LOUIS LEMOS CONTINUED OBJECTION TO  
RDG-1 CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
4-8-19 [18]

25. 19-21795-D-13 ANTHONY/JEWELLE BASA OBJECTION TO CONFIRMATION OF  
AP-1 PLAN BY MUFG UNION BANK, N.A.  
4-18-19 [16]

**Final ruling:**

**This case was dismissed on May 21, 2019. As a result the objection will be overruled by minute order as moot. No appearance is necessary.**

26. 16-27397-D-13 YOLANDA BURGIN CONTINUED MOTION TO MODIFY PLAN  
PGM-7 2-26-19 [139]

27. 19-21036-D-13 JULIE/GREGORY RENWICK CONTINUED OBJECTION TO  
RDG-1 CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
4-22-19 [23]

28. 19-21036-D-13 JULIE/GREGORY RENWICK CONTINUED OBJECTION TO  
APN-1 CONFIRMATION OF PLAN BY TOYOTA  
MOTOR CREDIT CORPORATION  
3-27-19 [16]

29. 19-21561-D-13 BEVERLY LUCIO OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
5-13-19 [20]

30. 19-21561-D-13 BEVERLY LUCIO OBJECTION TO CONFIRMATION OF  
AP-1 PLAN BY U.S. BANK, N.A.  
5-15-19 [23]

31. 19-21066-D-13 KRISTINA BOYD CONTINUED OBJECTION TO  
RDG-1 CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
4-22-19 [24]

**Final ruling:**

**This Chapter 13 case was transferred to Dept. C, the Hon. Christopher Klein presiding. As such, this objection is continued to June 4, 2019 at 2:00 p.m. to be heard in Courtroom 33. No appearance is necessary.**

32. 19-21066-D-13 KRISTINA BOYD CONTINUED OBJECTION TO  
MBW-1 CONFIRMATION OF PLAN BY SAFE  
CREDIT UNION  
4-2-19 [15]

**Final ruling:**

**This Chapter 13 case was transferred to Dept. C, the Hon. Christopher Klein presiding. As such, this objection is continued to June 4, 2019 at 2:00 p.m. to be heard in Courtroom 33. No appearance is necessary.**

33. 19-23166-D-13 DANILO/WENDILINA DIWA MOTION TO EXTEND AUTOMATIC STAY  
JBR-1 5-22-19 [8]
34. 19-21573-D-13 SHANNON FOLEY OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D GREER  
5-13-19 [25]
35. 19-21675-D-13 ARNOLD ANDRADE OBJECTION TO CONFIRMATION OF  
ETL-1 PLAN BY THE BANK OF NEW YORK  
MELLON  
5-10-19 [17]
36. 19-22978-D-13 RACQUEL NUDO MOTION FOR RELIEF FROM  
MML-1 AUTOMATIC STAY  
MARIA LYNE VS. 5-17-19 [11]

37. 17-21196-D-13 MICHAEL/IMEE TAGORDA  
MKM-3

MOTION TO INCUR DEBT  
5-13-19 [46]