

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

August 7, 2018 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.	18-21214-D-13	JOSE PATINO	CONTINUED MOTION TO CONFIRM PLAN
	PGM-1		5-19-18 [23]

2.	16-20617-D-13	CHARLES/ANNA MCKINLEY	MOTION TO MODIFY PLAN
	MC-5		6-28-18 [85]

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. 18-22825-D-13 PIERRE CHAHOUD AND SUZAN OBJECTION TO DEBTORS' CLAIM OF
RDG-3 AKHNANA EXEMPTIONS
7-5-18 [44]

Final ruling:

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

4. 17-26727-D-13 BEVERLY LUCIO MOTION FOR RELIEF FROM
AMM-1 AUTOMATIC STAY
U.S. BANK, N.A. VS. 6-22-18 [30]

5. 17-21547-D-13 DAVID JARRETT CONTINUED MOTION FOR RELIEF
EAT-1 FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 4-10-18 [61]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

6. 17-26152-D-13 VERNON/EDWINA DAYO OBJECTION TO CLAIM OF CACH,
FF-1 LLC, CLAIM NUMBER 6
6-11-18 [23]

Tentative ruling:

This is the debtors' objection to the claim of CACH, LLC, Claim No. 6 on the court's claims register. The court agrees with the debtors' first point but not the second. The Account Detail attached to the proof of claim demonstrates the claim is barred by the applicable statute of limitations; thus, the claim will be disallowed. However, the debtors' request for an award of attorney's fees will be denied. "Unless a contract or statute provides otherwise, each party to a lawsuit must pay its own attorney fees." Amtower v. Photon Dynamics, Inc., 158 Cal. App. 4th 1582, 1601 (2008), citing Cal. Code Civ. Proc. § 1021. The only statute cited by the debtors is Cal. Code Civ. Proc. § 337, which sets forth the applicable statute of limitations. It says nothing about attorney's fees. The debtors have not provided a copy of any contract and there is no copy of a contract attached to the proof of claim. Therefore, the debtors have not shown a statutory or contractual basis on which attorney's fees may be awarded.

Accordingly, the objection will be sustained in part. The claim will be disallowed but the request for an award of attorney's fees will be denied. The court will issue an order from chambers. The court will hear the matter.

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Tri Counties Bank (the "Bank"). The moving parties served the Bank by certified mail to the attention of an officer, as required by Fed. R. Bankr. P. 7004(h). However, they failed to also serve the Bank at the address designated on its request for special notice, filed three months before the motion was filed and served. Although service as designated in a request for special notice is not technically required, parties who file requests for special notice generally do so to ensure they are kept apprised of activity in the case, including, presumably, activity relating to them. For some reason, the moving parties did serve four other creditors who have filed requests for special notice at their designated addresses; thus, it appears it would not have been a burden for the moving parties to also serve the Bank in accordance with its request for special notice.

As such, in order to ensure the Bank is fully apprised of the motion, the court will continue the hearing to August 21, 2018 at 10:00 a.m., the moving parties to file a notice of continued hearing and serve it, together with the motion, supporting declaration, and exhibit, pursuant to the Bank's request for special notice. The notice of continued hearing shall be a notice pursuant to LBR 9014-1(f)(2) (no written opposition required).

In addition, the court is not persuaded the moving parties have demonstrated they are entitled to the relief requested, as required by LBR 9014-1(d)(3)(D). There are four basic elements of an avoidable lien under § 522(f)(1)(A):

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be ... a judicial lien. 11 U.S.C. § 522(f)(1).

In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table). Here, although the debtors listed the property on their Schedule C, they listed the "amount of the exemption" they claim as \$0.00. Although the debtors did not cite it, there is an unpublished decision of the Bankruptcy Appellate Panel permitting a debtor to avoid a judicial lien where the value claimed as exempt was \$0. See In re Green, 2013 Bankr. LEXIS 4181, *19, 2013 WL 4055846 (9th Cir. BAP 2013).

However, since that decision was issued, the judge who authored it has authored two decisions questioning a claim of exemption valued at \$0. See In re Ellison, 2017 Bankr. LEXIS 2561, *3 and n.3 (9th Cir. BAP 2017) [debtor "did not effectively claim an exemption" when he listed its value at \$0]; In re Smith, 570 B.R. 844, 848, n.4 (Bankr. D. Idaho 2017) [declining to allow an exemption valued at \$0]. And another judge has held to the same effect. In re Cherner, 2014 Bankr. LEXIS 2243, *2 (Bankr. N.D. Cal. 2014) ["By claiming '0.00' as the exempt amount, [the debtor] created no exempt interest" in the assets.]. The court believes the latter cases have greater validity than Green. Thus, the debtors will need to file an amended Schedule C, claiming an interest in the property as exempt in some amount, even if de minimis, before they may seek to avoid the Bank's judicial lien.¹

The hearing will be continued by minute order. No appearance is necessary on August 7, 2018.

1 The debtors state, "No objection to Debtors' claimed exemptions have [sic] been filed, and the time to do so has expired." Debtors' Motion, filed July 5, 2018, at 2:9-11. However, this so-called "exemption by default" does not apply in the context of a motion to avoid a judicial lien. That is, a creditor may defend a motion to avoid its lien by challenging the validity of the exemption, although the deadline to object to exemptions, under Fed. R. Bankr. P. 4003(b)(1), has expired. In re Morgan, 149 B.R. 147, 152 (9th Cir. BAP 1993); In re Wright, 525 B.R. 464, 470-71 (Bankr. D. Mont. 2015); In re Gardner, 417 B.R. 616, 621-22 (Bankr. D. Idaho 2009); In re Mohring, 142 B.R. 389, 393-94 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247.

8. 17-27468-D-13 RYAN KLASSEN OBJECTION TO CLAIM OF JPMORGAN
JCK-3 CHASE BANK, N.A., CLAIM NUMBER 10
7-9-18 [57]

Final ruling:

This is a duplicate of the objection to claim that is Item 9 on this calendar. It was calendared because the debtor's attorney filed an unnecessary "continued objection" to the claim, DN 57, in addition to the required notice of continued hearing. This matter will be removed from calendar as a duplicate.

9. 17-27468-D-13 RYAN KLASSEN CONTINUED OBJECTION TO CLAIM OF
JCK-3 JPMORGAN CHASE BANK, N.A.,
CLAIM NUMBER 10
5-14-18 [35]

Tentative ruling:

This is the debtor's objection to the claim of JPMorgan Chase Bank, N.A. (the "Bank"), Claim No. 10 on the court's claims register. The hearing was continued for the debtor to file a notice of continued hearing and serve it, together with the objection and declaration, at the address listed in the debtor's schedules and the address designated in the Bank's request for special notice. The debtor filed a notice of continued hearing, but also filed a "Debtor's Continued Objection . . ." and "Debtor's Declaration in Support of Debtor's Continued Objection . . ." The "continued objection" and "declaration in support of continued objection" are verbatim duplicates of the originals. These were not called for by the court's earlier ruling, were not necessary, and have resulted in the matter being calendared twice. They have cluttered the court's docket and resulted in confusion because their filing suggests there are differences between them and the originals.

In addition, the debtor did not serve the notice of continued hearing (or the continued objection or declaration re same) on the Bank at the address listed on the debtor's schedules, as required by LBR 3007-1(c) and the earlier ruling. Finally, the proof of service of the notice of continued hearing, continued objection, and declaration re same was filed on July 9, 2018 but shows a signature and service date of May 14, 2018, the date the original documents were filed and served. If the debtor's counsel brings a corrected proof of service, ready for filing and with the correct service date, to the hearing, the court will hear the matter. If not, the objection will be overruled.

10. 17-27468-D-13 RYAN KLASSEN MOTION TO MODIFY PLAN
JCK-3 6-21-18 [52]

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.

11. 17-27770-D-13 LYNN SALERNO MOTION TO MODIFY PLAN
JCK-5 6-21-18 [63]

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. 18-21171-D-13 EVERETT MARSHALL AND MOTION TO CONFIRM PLAN
KWS-2 LYNETTE HASAN-MARSHALL 6-26-18 [68]

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.

13. 18-20875-D-13 RANDY/TAMMY RALSTON AMENDED MOTION TO CONFIRM PLAN
MSN-5 6-19-18 [74]

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.

