

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 16, 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.

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|----|------------------------|---------------|---|
| 1. | 18-23903-D-13 MJH-2 | LARRY SWANSON | OBJECTION TO CLAIM OF DEUTSCH BANK NATIONAL TRUST COMPANY, CLAIM NUMBER 1-1 8-22-18 [22] |
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Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

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| 2. | 18-23903-D-13 MJH-3 | LARRY SWANSON | MOTION TO CONFIRM PLAN 8-22-18 [27] |
|----|------------------------|---------------|--|

3. 18-24109-D-13 ROBERT ILOG MOTION TO CONFIRM PLAN
JV-1 8-20-18 [14]

Final ruling:

This case was converted to a Chapter 7 on October 5, 2018. As such, the motion will be denied by minute order as moot. No appearance is necessary.

4. 16-26711-D-13 JONEE MCGEE MOTION TO MODIFY PLAN
MC-2 8-31-18 [36]

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.

5. 17-20211-D-13 ROBERT/CYNTHIA RANGEL MOTION TO MODIFY PLAN
JCK-6 8-31-18 [86]

6. 16-23114-D-13 DAISY TEODOSIO MOTION TO INCUR DEBT
MC-1 9-10-18 [49]

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 to incur debt is supported by the record. As such the court will grant the motion by minute order. No appearance is necessary.

7. 18-24220-D-7 LEY NGAR
GAB-1

MOTION FOR ADMINISTRATIVE
EXPENSES
8-24-18 [24]

Final ruling:

This is the motion of National Commercial Recovery, Inc. for an award of administrative expenses. The motion will be denied for the following reasons. First, the motion, memorandum of points and authorities, declaration, and exhibits were all filed as a single document rather than separately, as required by LBR 9004-2(c)(1) and 9014-1(d)(4). Second, the moving party served only the debtor, debtor's attorney, chapter 13 trustee, and United States Trustee, and failed to serve any of the other creditors in the case. Although Fed. R. Bankr. P. 2002(a) does not require such service, the applicable statute, § 503(b) of the Bankruptcy Code, provides for the allowance of administrative expenses "after notice and a hearing," which, in turn, means "such notice as is appropriate in the particular circumstances." § 102(1)(A). The court finds that in this case of a creditor seeking allowance of a \$16,785 administrative claim, notice appropriate in the circumstances includes notice to all creditors.

The motion will be denied for the additional independent reason that it does not demonstrate that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(3)(D). The moving party seeks allowance of an administrative claim for expenses allegedly incurred by the debtor in the ordinary course of the debtor's business between November 24, 2015 and January 19, 2016, whereas the debtor filed this case on July 5, 2018. For its position that the expenses were incurred "post-petition," as required by § 503(b)(1), the moving party relies on the fact that the debtor filed two prior bankruptcy cases, including one filed August 28, 2015, before the alleged expenses were incurred. (Both cases were dismissed before entry of a discharge.) That is, the expenses were incurred "post-petition" as to the debtor's first case. (In fact, the expenses were incurred post-dismissal, as the case was dismissed on November 9, 2015. Some of the expenses were incurred "post-petition" as to the debtor's second case; others were incurred during the gap between the debtor's first and second cases.) The moving party has cited no authority, and the court is aware of none, for the proposition that a creditor is entitled to an administrative expense claim in one case for expenses incurred after the filing of a prior case which was dismissed.

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

8. 18-24820-D-13 CLYDE/LAILE ATKIN
APN-1

OBJECTION TO CONFIRMATION OF
PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
9-19-18 [19]

9. 18-24820-D-13 CLYDE/LAILE ATKIN OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
9-17-18 [16]

10. 18-23522-D-13 CLAUDIA ROCHA MOTION TO CONFIRM PLAN
AVN-1 8-16-18 [44]

11. 18-25123-D-13 CURTIS NORMAN MOTION FOR RELIEF FROM
NATIONSTAR MORTGAGE LLC VS. AUTOMATIC STAY
9-7-18 [20]

Final ruling:

This case was dismissed on September 11, 2018. As a result the motion will be denied by minute order as moot. No appearance is necessary.

12. 18-22825-D-13 PIERRE CHAHOUD AND SUZAN MOTION TO CONFIRM PLAN
GMW-1 AKHNANA 8-20-18 [79]

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 failed to serve the California Department of Tax and Fee Administration, which, according to the debtors' schedules, holds a priority claim plus half in amount of the general unsecured claims, at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b); and (2) the moving parties failed to serve PG&E, added to their Schedule E/F by amendment filed September 18, 2018, as required by Fed. R. Bankr. P. 2002(a)(9).

As a result of these service defects, the motion will be denied by minute order 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.

13. 18-25125-D-13 RAINEE FERNANDEZ MOTION TO VALUE COLLATERAL OF
MC-1 INTERNAL REVENUE SERVICE
9-17-18 [18]

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. 18-24630-D-13 JOSEPHINE FINKEN OBJECTION TO CONFIRMATION OF
JM-1 PLAN BY LENDMARK FINANCIAL
SERVICES, LLC
9-18-18 [39]

Final ruling:

This case was dismissed on September 18, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

15. 18-24630-D-13 JOSEPHINE FINKEN OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
9-17-18 [36]

Final ruling:

This case was dismissed on September 18, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

16. 13-29733-D-13 ALAN BERNER MOTION FOR SUBSTITUTION OF TODD
CLH-1 BERNER AS THE SUCCESSOR TO THE
DECEASED DEBTOR AND/OR MOTION
FOR CONTINUED ADMINISTRATION OF
THE CASE UNDER CHAPTER 13,
MOTION FOR WAIVER OF THE POST
CERTIFICATION REQUIREMENT FOR
ENTRY OF DISCHARGE FOR THE
DECEASED DEBTOR
9-10-18 [58]

17. 18-22241-D-13 LEYNE FERNANDEZ
RS-3

MOTION TO CONFIRM PLAN
9-4-18 [59]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving papers incorrectly state the location of the hearing as the Modesto courthouse; and (2) the notice of hearing does not include the language required by LBR 9014-1(d)(3)(B)(ii) and (iii).

As a result of these notice defects, the motion will be denied by minute order and the court need not reach the issues raised by the trustee and Trinity Financial Services at this time. The motion will be denied by minute order. No appearance is necessary.

18. 18-24845-D-13 VICTOR HERRADA
PGM-1

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA
9-9-18 [21]

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.

19. 18-24845-D-13 VICTOR HERRADA
PGM-2

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK USA, N.A.
9-14-18 [26]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Capital One Bank (USA), N.A. The motion will be denied because the moving party has failed to claim an exemption in the property. 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). The debtor has failed to identify and establish by admissible evidence the necessary elements to establish he is entitled to the relief requested.

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

20. 18-24845-D-13 VICTOR HERRADA OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
9-17-18 [32]

21. 18-24646-D-7 STEVEN/JILL WICK OBJECTION TO CONFIRMATION OF
NLG-1 PLAN BY REAL TIME RESOLUTIONS,
INC.
9-20-18 [35]

Final ruling:

This case was converted to a Chapter 7 on September 28, 2018. As such, the objection will be overruled by minute order as moot. No appearance is necessary.

22. 18-24646-D-7 STEVEN/JILL WICK OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
9-17-18 [29]

Final ruling:

This case was converted to a Chapter 7 on September 28, 2018. As such, the objection will be overruled by minute order as moot. No appearance is necessary.

23. 18-20855-D-13 WALTER/SHIRLEY SAUNDERS MOTION TO APPROVE LOAN
TAG-3 MODIFICATION
9-12-18 [113]

24. 18-21657-D-13 ROBERT/JENNIFER WILLIAMS MOTION TO CONFIRM PLAN
AOE-6 9-5-18 [133]

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.

25. 18-25857-D-13 MARVIN/MARY JONES MOTION TO EXTEND AUTOMATIC STAY
JCK-1 9-17-18 [8]

Tentative ruling:

This is the debtors' motion to extend the automatic stay pursuant to § 362(c) of the Bankruptcy Code. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has the following preliminary concerns.

First, the moving parties served only the chapter 13 trustee, the United States Trustee, and the holder of the first deed of trust on their home. They did not serve the holder of the second deed of trust or the holders of unsecured claims; thus, any order extending the stay will not apply to those creditors. Second, the moving parties failed to serve either of the law firms that filed requests for special notice in the prior case on behalf of the first trust deed holder. Thus, if the court is inclined to extend the stay, the court will likely extend it for a short period and require the moving parties to serve those firms.

Third, the moving papers raise a number of questions that bear on whether the court can find by clear and convincing evidence that there has been a substantial change in the debtors' financial or personal affairs since the dismissal of the prior case or any other reason to conclude this case will be concluded with a confirmed plan that will be fully performed. The debtors' prior case was dismissed on their own motion on September 4, 2018. This new case was filed just two weeks later, on September 17, 2018. The debtors testify they "tried [their] best to stay current" on their first mortgage in the prior case. Debtors' Declaration, filed Sept. 17, 2018 ("Decl."), ¶ 2. However, they gradually got behind and by 2017 could not catch up. The mortgage holder started a foreclosure in May of this year and a trustee's sale was set for September 24, 2018.¹ The debtors testify, "To save our home, we had to dismiss the prior Chapter 13 and refile this case. In the upmost [sic] good faith, we are determined to budget carefully and perform this new plan. We have essentially the same significant pension and social security monies." Id., ¶ 4.

Actually, the debtors' income, which consists solely of social security and pension income, has dropped by \$204 per month. Their mortgage payment has increased by \$292 per month and they now owe \$30,739 in mortgage arrears, whereas they owed no arrears when the prior case was filed. Despite these negatives in their financial

condition, the debtors contend they will be able to increase their plan payment plus mortgage payment from \$2,368 in the prior case (a plan payment of \$420 plus a mortgage payment of \$1,948) to \$3,125 in this case (including the mortgage payment). Thus, they claim they will be able to squeeze an additional \$961 out of a budget under which they claim they "did their best" in the prior case to stay current on the mortgage.

To accomplish this, the debtors have decreased, almost across the board, what were already modest expenses. They have decreased their budgeted expenses for home maintenance; electricity and gas; telephone, Internet, satellite, and cable; food and housekeeping supplies; and clothing, laundry, and dry cleaning by \$100 each and have deleted \$300 they had budgeted in the prior case as a set-aside for future taxes and \$100 they had budgeted for birthday and Christmas gifts. The debtors ask the court to give them, "as honest Debtors a second chance to save [their] home." Decl., ¶ 5. The court sympathizes with the debtors' situation but is unable to conclude they have made a clear and convincing showing they will be able to make a significantly increased plan payment with less income, simply by dropping their expenses even lower (by \$961 per month) than they were when the debtors were doing their best.

The court will hear the matter.

1 The mortgage holder was classified in the debtors' confirmed plan in the prior case as a Class 4 creditor, paid directly by the debtors, and therefore had relief from stay once the debtors defaulted.

26. 18-24962-D-13 GUADALUPE PEREZ
DWE-1

OBJECTION TO CONFIRMATION OF
PLAN BY WILMINGTON SAVINGS FUND
SOCIETY, FSB
9-17-18 [40]

Final ruling:

This case was dismissed on September 18, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

27. 18-24962-D-13 GUADALUPE PEREZ
MSK-1
WILMINGTON SAVINGS FUND
SOCIETY, FSB VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
9-7-18 [34]

DEBTOR DISMISSED: 09/18/2018

28. 18-24962-D-13 GUADALUPE PEREZ OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
9-17-18 [44]

Final ruling:

This case was dismissed on September 18, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

29. 15-26163-D-13 JOHN/ANNETTE PAYAN CONTINUED MOTION TO MODIFY PLAN
JM-4 7-23-18 [60]

30. 18-24864-D-13 ERIC BARBARY AND MARIAN MOTION TO VALUE COLLATERAL OF
PGM-2 CORK-BARBARY SANTANDER CONSUMER USA
9-17-18 [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.

31. 18-24864-D-13 ERIC BARBARY AND MARIAN OBJECTION TO CONFIRMATION OF
RDG-2 CORK-BARBARY PLAN BY RUSSELL D. GREER
9-17-18 [36]

32. 17-26777-D-13 MARLENE DOUGLAS OBJECTION TO CLAIM OF CAVALRY
UST-1 SPV I, LLC, CLAIM NUMBER 1
8-30-18 [51]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the U.S. Trustee's objection to the claim of Cavalry SPV I, Claim No. 1 has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the U.S. Trustee's objection to claim. No appearance is necessary.

33. 18-24677-D-13 DIANNA VIERRA OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
9-17-18 [28]

34. 18-24581-D-13 JOSE VALLE OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
9-17-18 [27]

Final ruling:

This case was dismissed on September 18, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

35. 13-30284-D-13 SONYA FARNSWORTH MOTION TO MODIFY PLAN
KWS-1 8-23-18 [45]

36. 18-24799-D-13 IGNACIO/TEODOMIRA MORENO OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
9-17-18 [18]
37. 18-23987-D-13 ASMAR ERVIN CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
8-13-18 [16]