

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

January 8, 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.	18-20004-D-13	JALON/MIRANDA HARRISON	MOTION TO MODIFY PLAN
	JCK-5		11-14-18 [78]

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. 18-26406-D-13 GEORGE/ELIZABETH OBJECTION TO CONFIRMATION OF  
RDG-2 TAUMOEPEAU PLAN BY RUSSELL D. GREER  
12-3-18 [25]

3. 18-26406-D-13 GEORGE/ELIZABETH OBJECTION TO CONFIRMATION OF  
SW-1 TAUMOEPEAU PLAN BY ALLY BANK  
11-27-18 [19]

4. 18-27112-D-13 JUANITA WHITT-ALEXANDER MOTION TO VALUE COLLATERAL OF  
HWW-1 ONEMAIN CONSUMER LOAN, INC.  
12-9-18 [20]

**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.

5. 18-27212-D-13 BIANCA JACKSON MOTION TO EXTEND AUTOMATIC STAY  
11-29-18 [17]

**Tentative ruling:**

This is the debtor's motion to extend the automatic stay pursuant to § 362(c)(3). The motion was not properly noticed - the notice refers to two local rules that do not exist and it purports to require that objections be made in a form and at a time that are contrary to the court's local rules. Therefore, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

In the motion, the debtor states her prior case was dismissed for failure, through inadvertence, to file required documents when due; that she is attempting to get a mortgage loan modification; and that this case will allow her to resolve the mortgage arrears on her residence through loan modifications and plan payments. The motion is not signed under oath; however, it bears the debtor's handwritten signature. The court will therefore construe the motion as the debtor's certification of the truth of the matters stated, pursuant to Fed. R. Bankr. P. 9011(b).

First, the court cannot grant the relief requested as Bankruptcy Code § 362(c)(3)(B) requires the court to conclude a hearing within 30 days of the filing of the petition. As this case was filed on November 15, 2018, the 30-day period for the court to conclude the hearing ran on December 16, 2018.

Second, and in any event, there is no suggestion of a change in the debtor's financial or personal affairs since the dismissal of her prior case that would render this case likely to be successful, and the facts suggest it will not be successful. For one thing, the only income listed in the debtor's Schedule I is \$2,550 from the rental of three rooms in her home plus \$200 in contributions from family members, whereas according to her statement of financial affairs, the only income the debtor has had in the three years prior to the commencement of this case is \$7,660, which she received from January 1 of this year to the petition date, November 15, which is an average of \$730 per month. Even if the debtor's rental income were \$2,550 per month, that amount is almost certainly insufficient to enable her to fund a chapter 13 plan, as her household expenses, as listed in Schedule J, are so meager as to be unrealistic for a household of one, let alone a household of two. (The debtor's statement of affairs shows her marital status as married.)

Third, the debtor's proposed chapter 13 plan lists a single creditor, her mortgage lender, and lists the amount of the arrears as to be determined, the arrearage dividend as unknown, and the post-petition monthly payment as "loan modification." The debtor clearly is depending on getting a loan modification, but she has presented no evidence as to what stage of the application process she is in, when she began the process, whether she was involved in a loan modification process when she filed her three cases in 2017, and what the likelihood of success is in her pending application process, if any.

Further, in her petition, the debtor was required to answer the question "Have you filed for bankruptcy within the last 8 years?" The debtor answered "No," whereas within those eight years, she was a debtor in one chapter 7 case and five prior chapter 13 cases, of which three were filed and dismissed in 2017 and one in 2018, prior to the filing of the present case. Not only did the debtor answer the question in the petition, signed under oath, inaccurately, but the filing and dismissal of that many cases in the last two years gives the court no confidence the present case will result in a confirmed plan that will be fully performed.

Finally, an unscheduled creditor, JPMorgan Chase Bank, has filed a proof of claim for \$9,699, purporting to be secured by a 2011 Chevrolet Camaro, also not scheduled by the debtor. The debtor's proposed plan does not provide for this claim, does not include a plan term, and does not include a proposed dividend for unsecured creditors. (The debtor scheduled no unsecured creditors, but she was required to file a complete plan nonetheless.) Even assuming the debtor no longer owes the car loan, her proposed plan is simply too vague for the court to be able to determine it is feasible, whatever its length.

For the reasons stated, the court intends to deny the motion. The court will hear the matter.

6. 18-26522-D-13 ALICIA BROWN-RILEY  
RDG-2  
OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
12-4-18 [22]
7. 15-29426-D-13 DANIEL/NORA OMALZA  
AP-1  
WELLS FARGO BANK, N.A. VS.  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-28-18 [91]
8. 17-24226-D-13 EDELMIRO ZUNIGA  
PGM-1  
MOTION TO MODIFY PLAN  
11-9-18 [58]
9. 15-26928-D-13 DAN/KIMBERLEE FRASER  
JHW-1  
SANTANDER CONSUMER USA, INC.  
VS.  
CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
11-16-18 [98]

**Final ruling:**

**This matter was resolved by stipulation of the parties entered on January 3, 2019. The matter is removed from calendar. No appearance is necessary.**

10. 18-26931-D-13 ERNEST BEZLEY MOTION FOR RELIEF FROM  
NAR-1 AUTOMATIC STAY  
JOY WORKMAN VS. 11-21-18 [12]
11. 18-25445-D-13 JAMAICA MOON AND VIDAL CONTINUED OBJECTION TO DEBTORS'  
RDG-2 DANIELS CLAIM OF EXEMPTIONS  
10-15-18 [18]
12. 18-25445-D-13 JAMAICA MOON AND VIDAL MOTION TO CONFIRM PLAN  
SLL-1 DANIELS 11-9-18 [28]
13. 18-26546-D-13 FELICIA ANARO OBJECTION TO CONFIRMATION OF  
RAS-1 PLAN BY U.S. BANK, N.A.  
12-5-18 [32]

**Final ruling:**

**This case was dismissed on December 13, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.**

14. 18-26546-D-13 FELICIA ANARO  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
12-4-18 [26]

**Final ruling:**

**This case was dismissed on December 13, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.**

15. 18-26550-D-13 ANNA REYNOSO  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
12-3-18 [13]

16. 18-27551-D-13 ANTONIO VIOLA  
ADR-1  
SOLID & SMART INVESTMENTS,  
LLC VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-5-18 [9]

**Final ruling:**

**This case was dismissed on December 14, 2018. As a result the motion will be denied by minute order as moot. No appearance is necessary.**

17. 18-20855-D-13 WALTER/SHIRLEY SAUNDERS  
TAG-2

CONTINUED MOTION TO CONFIRM  
PLAN  
9-12-18 [107]

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

19. 18-27257-D-13 ANITA TROTTY MOTION FOR RELIEF FROM  
NAR-1 AUTOMATIC STAY  
MARY SHEN VS. 12-10-18 [15]

**Final ruling:**

**This case was dismissed on December 17, 2018. As a result the motion will be denied by minute order as moot. No appearance is necessary.**

20. 18-27461-D-13 MARIA MARQUEZ MOTION FOR TEMPORARY WAIVER OF  
THE CREDIT COUNSELING  
REQUIREMENT  
11-30-18 [9]

**Final ruling:**

**This case was dismissed on December 18, 2018. As a result the motion will be denied by minute order as moot. No appearance is necessary.**

21. 18-25165-D-13 FRANK/MYRA RUEDA MOTION TO CONFIRM PLAN  
MC-1 11-16-18 [26]

**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.**

22.	18-21171-D-13 RDG-3	EVERETT MARSHALL AND LYNETTE HASAN-MARSHALL	OBJECTION TO CLAIM OF CONSTRUCTION ARBITRATION ASSOCIATES, LTD., CLAIM NUMBER 10-1 11-21-18 [84]
23.	18-25171-D-13 RDG-1	LORENA LOPEZ-ALVAREZ	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 10-15-18 [24]
24.	18-21974-D-13 AP-1	MOLICA SON WELLS FARGO BANK, N.A.	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY 11-5-18 [31]
25.	18-21974-D-13 GMW-1	MOLICA SON	CONTINUED MOTION TO MODIFY PLAN 10-31-18 [26]



26. 15-21791-D-13 LYNELLE SAYRE  
JAD-1

MOTION TO REFINANCE  
12-13-18 [44]

27. 18-27745-D-13 JUAN/MARIA SALAS

MOTION TO EXTEND AUTOMATIC STAY  
12-20-18 [11]

**Tentative ruling:**

This is the debtors' motion to extend the automatic stay, pursuant to § 362(c)(3) of the Bankruptcy Code. The motion was noticed pursuant to LBR 9014-1(f)(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.

By signature following their attorney's signature at the end of the notice of motion and motion, the debtors testify under oath that the facts set forth in the motion are true and correct. The motion states the debtors' prior case was dismissed due to attorney mistake. This appears to be accurate.<sup>1 2</sup> However, the debtors have failed to submit clear and convincing evidence that there has been a substantial change in their financial or personal affairs such that they will be able to obtain confirmation of a plan in this case that will be fully performed.

First, the motion states the debtors are proposing a 100% plan, and that the "[p]revious case was also a 100 percent repayment plan." That is incorrect. The plan filed in the prior case was a 0% plan. In their petition in the present case, the debtors answered the question, "Have you filed for bankruptcy within the last 8 years?" with "No" - obviously incorrect. And except for the questions about their income and whether their debts are primarily consumer debts, the debtors answered every question in the Statement of Financial Affairs in both cases with "No," including the one asking whether, within the year before filing, they or anyone on their behalf had paid anyone for bankruptcy consultation or preparation, whereas the Rule 2016(b) statement filed in the present case reveals their attorney received \$1,624 from the debtors before the filing of the case. It appears the debtors' attorney or his staff prepared these documents; however, the debtors signed them, with or without reading them, which calls into question whether any of their sworn testimony may be relied upon as accurate.

This issue comes into sharp focus with the debtors' Schedules I and J in the two cases, which the debtors have altered. In the prior case, they listed debtor Juan Salas' gross wages as \$4,788 but in the present case, as \$6,784. (They indicated in the prior case they did not expect any increase or decrease in income in the following year.) The debtors' net income was listed in the prior case as \$4,905 but \$6,240 in the present case. The Schedules I in the two cases show Mr. Salas as having been employed for the past 16 months as an auto body tech for Hayward Body Shop. So unless he received a \$2,000 per month raise between October 23 and December 13 of this year, one or the other of the two Schedules I is

incorrect.

It appears virtually certain the debtors' prior case was dismissed as a result of their attorney's error, and that weighs in their favor in this motion. However, the questions raised by the debtors' incorrect responses in their petition and statements of affairs, together with the dramatic unexplained increase in Mr. Salas' wages, weigh against them in the good faith analysis. The court will hear the matter.

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- 1 The prior case was a skeletal filing; the schedules and statements were required to be filed by October 23, 2018. The documents required were clearly listed on the Notice of Incomplete Filing, Etc. On October 23, 2018, all of the documents were filed except the first one on the list - the attorney's disclosure statement; that is, the statement required by Fed. R. Bankr. P. 2016(b). When the disclosure statement still had not been filed by October 29, 2018, the case was dismissed.
- 2 The debtors' attorney should take note of the multiple procedural problems with the motion. The notice of motion, motion, debtors' declaration, and proof of service were all filed as a single document; they do not include a docket control number; and the notice states that anyone wishing to oppose the motion must attend the hearing and that "[a]ny written response or evidence must be filed and served at the hearing." All of these are contrary to the court's local rules. The notice also states parties may contact the clerk's office or use the court's website "to obtain a copy of an approved court form for use in preparing your response or you may prepare your response using the format required by LBR 9004-1 and the Court Manual," whereas there is no approved court form in this district for a response to a motion and there is no Court Manual.

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| 28. | 15-29688-D-13<br>MC-2 | ALPHONSE/MARIELE BROWN | MOTION TO AVOID LIEN OF CACH,<br>LLC<br>12-18-18 [37]                                  |
|     |                       |                        |  |
| 29. | 15-29688-D-13<br>MC-3 | ALPHONSE/MARIELE BROWN | MOTION TO AVOID LIEN OF<br>STANISLAUS CREDIT CONTROL<br>SERVICE, INC.<br>12-18-18 [42] |