

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 12, 2016 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.	15-28600-D-13 RDG-2	RUBEN VALLEJO	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL GREER 12-18-15 [24]
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2.	14-28215-D-13 MC-2	DAN CALUMPIT	MOTION TO MODIFY PLAN 12-3-15 [39]
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3. 15-22818-D-13 SURINDER SINGH
PPR-1

OBJECTION TO CONFIRMATION OF
PLAN BY CHAMPION MORTGAGE, LLC
12-11-15 [53]

Final ruling:

This is the objection of Champion Mortgage, LLC, to confirmation of a chapter 13 plan filed by the debtor. (It is not clear whether the objection is directed to the debtor's original plan or an amended plan filed later.) Pursuant to the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines in this case, the deadline to file objections to confirmation of the debtor's original plan was June 3, 2015 and such objections were required to be set for hearing on June 30, 2015. Thus, the objection will be overruled as untimely.

The interests of Champion Mortgage will not be harmed by this ruling because the trustee's objection to confirmation of the debtor's original plan was sustained. It is possible, although not certain, the objection is directed to an amended plan filed by the debtor; if so, Champion Mortgage will not be prejudiced because the debtor's motion to confirm the amended plan has been denied.¹

Because the objection was not timely filed, it will be overruled by minute order. No appearance is necessary.

1 To the extent the objection is directed to the amended plan, it is not in the proper form. An objection to a plan filed after a debtor's original plan is to be filed as an opposition to the debtor's motion to confirm the plan. Compare LBR 3015-1(c)(4) with 3015-1(d)(1) and (2). As such, it should bear the same docket control number as the debtor's motion and should not be accompanied by its own notice of hearing.

4. 15-21621-D-13 JESUS/TERESA LOPEZ
DCJ-3

CONTINUED MOTION TO CONFIRM
PLAN
9-17-15 [48]

5. 15-25727-D-13 SUSAN WALKER
PGM-1

MOTION TO CONFIRM PLAN
11-16-15 [30]

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(b). Specifically, the moving party failed to serve the co-debtor listed on the debtor's Schedule H. Minimal research into the case law concerning § 101(5) and (10) of the Code discloses an extremely broad interpretation of "creditor," certainly one including co-debtors on obligations of the debtor. Further, the debtor was required by Fed. R. Bankr. P. 1007(a)(1) to list the co-debtor on her master address list, which she failed to do, with the result that the co-debtor has not received formal notice, or perhaps any notice, of this case in the six months it has been pending.

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

6. 15-27844-D-13 KHEVIN TRAN
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-23-15 [19]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. On December 1, 2015, the debtor filed an amended Schedule C. As a result of the filing of the amended Schedule C, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

7. 14-27445-D-13 PETER/LORI KOULOURIS

ORDER TO SHOW CAUSE
11-25-15 [144]

DEBTOR DISMISSED:

02/12/2015

JOINT DEBTOR DISMISSED:

02/12/2015

8. 15-25545-D-13 HERBERT JOHN BASA
HLG-2

MOTION TO CONFIRM PLAN
11-10-15 [46]

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 attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

9. 15-27945-D-13 MOHAMMED ALHAJI-HUSSAINI
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-4-15 [31]

10. 15-28555-D-13 GERARDO MARTINEZ
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-18-15 [17]

11. 15-28557-D-13 TOMAS CARRILLO
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-18-15 [18]

12. 15-28957-D-13 MARVIN/MARY JONES
JCK-1

MOTION TO VALUE COLLATERAL OF
DITECH FINANCIAL, LLC
12-4-15 [8]

Final ruling:

This is the debtors' motion to value collateral of Ditech Financial LLC, holder of a second mortgage on the debtors' residence. The motion will be denied because the moving parties served only Nationwide Acceptance which, according to the motion, holds the first mortgage, and failed to serve Ditech Financial.

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

13. 15-28957-D-13 MARVIN/MARY JONES
PPR-1

OBJECTION TO CONFIRMATION OF
PLAN BY THE BANK OF NEW YORK
MELLON
12-14-15 [19]

Final ruling:

Pursuant to the Amended Notice of Chapter 13 Bankruptcy Case filed in this case, objections to confirmation were to be set for hearing on February 9, 2016 at 10:00 a.m. Accordingly, the hearing on this objection will be continued by minute order to that date and time. No appearance is necessary on January 12, 2016.

Counsel for the objecting creditor should note that the notice of hearing incorrectly purports to require the filing of written opposition pursuant to LBR 9014-1(f)(1), whereas objections to confirmation are required to be noticed for hearing pursuant to LBR 9014-1(f)(2). LBR 3015-1(c)(4).

14. 15-25760-D-13 JUAN/KIMBERLY MARTINEZ MOTION TO CONFIRM PLAN
PGM-1 11-12-15 [40]

15. 15-28063-D-13 PHILLIP ATILANO MOTION TO AVOID LIEN OF ATRIA
HWW-1 SENIOR LIVING, INC.
12-15-15 [23]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

16. 15-28063-D-13 PHILLIP ATILANO OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
12-4-15 [20]

17. 15-27066-D-13 CYNTHIA BATTS MOTION TO CONFIRM PLAN
HWW-2 11-16-15 [34]

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 attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

18. 15-20967-D-13 BENJAMIN/WHITLEY FRENCH MOTION TO MODIFY PLAN
MC-1 11-24-15 [35]

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 attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

19. 15-27067-D-13 MARLENE DOUGLAS MOTION TO CONFIRM PLAN
PGM-2 11-30-15 [34]

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(b). When the debtor filed her schedules in this case, two weeks after the petition was filed, she included several creditors that had not been included on her master address list, filed when the case was filed. The debtor served this motion on the creditors listed on the master address list and those who had filed proofs of claim, but failed to serve the additional creditors added to the schedules.

In addition, the moving party failed to serve the co-debtor listed on her Schedule H. Minimal research into the case law concerning § 101(5) and (10) of the Code discloses an extremely broad interpretation of "creditor," certainly one including co-debtors on obligations of the debtor. Further, the debtor was required by Fed. R. Bankr. P. 1007(a)(1) to list the co-debtor on her master address list, which she failed to do, with the result that the co-debtor has not received formal notice, or perhaps any notice, of this case in the four months it has been pending.

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

20. 15-28386-D-13 GRAYLING WILLIAMS OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
12-18-15 [24]

Final ruling:

This case was dismissed on December 23, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

21. 15-27287-D-13 GINA TOSCANO
PGM-2

MOTION TO VALUE COLLATERAL OF
FINANCIAL CENTER CREDIT UNION
11-25-15 [30]

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.

22. 15-27387-D-13 JOSE/JOSEFINA PALOMINO
DVD-3

CONTINUED MOTION TO VALUE
COLLATERAL OF TRINITY FINANCIAL
SERVICES, LLC
10-9-15 [31]

Final ruling:

Pursuant to the parties' stipulation the hearing on this motion is continued to January 26, 2016 at 10:00 a.m. No appearance is necessary.

23. 15-28193-D-13 ANTHONY MOORE
JCK-1

MOTION TO CONFIRM PLAN
11-11-15 [20]

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 attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

24. 14-31998-D-13 YOLANDA BURGIN
PGM-1

MOTION TO MODIFY PLAN
12-3-15 [77]

25. 15-28600-D-13 RUBEN VALLEJO

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY OCWEN
LOAN SERVICING, LLC
11-13-15 [10]

26. 15-29611-D-13 ANDREW/SHELLYN MOULYN
RS-1

MOTION TO EXTEND AUTOMATIC STAY
12-29-15 [12]

Tentative ruling:

This is the debtors' motion to extend the automatic stay pursuant to § 362(c) (3) (B) 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.

The court may extend the stay "only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed" § 362(c) (3) (B). A case is presumptively not filed in good faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the prior case or any other reason to conclude that the later case will be concluded with a confirmed plan that will be fully performed. § 362(c) (3) (C) (i) (III). The debtors' prior case was filed just six months ago, on July 13, 2015, and dismissed on September 23, 2015. They filed this new case on December 14, 2015. The debtors' Schedules I filed in the two cases show that the debtor's gross wages have dropped since the prior case was commenced, from \$5,833 to \$4,119 per month.

Apparently to offset that drop, the debtor has reduced the amount of his tax withholdings and made other changes to his payroll deductions, the combined effect of which is a much lesser decrease in his net wages, but a decrease nonetheless - from \$3,941 to \$3,596. To offset that decrease and to add even more income to the budget, Schedule I in the present case shows a \$900 per month contribution from the debtors' son that was not included in the prior case. (The debtors' Schedules J in the two cases reflect that their adult son and daughter resided and continue to reside with the debtors.) Thus, the debtors' monthly net income available for contribution to their plan is \$2,841, an increase of \$560 over the amount they proposed to pay in the prior case, \$2,281.

The problem is that the debtors have not testified to any of this. Their supporting declaration states only that their prior case was dismissed due to failure to make plan payments; that they have timely filed all schedules in the present case, along with a plan that accounts for all secured debts or for the surrender of secured assets; that in their opinion, the extension of the automatic stay is in the best interest of creditors because the creditors stand to be paid if the case is successful; that the debtors intend to make all of their plan payments; that they intend to pledge their disposable income as necessary to save their home;

that they believe they have everything necessary to achieve confirmation in the present case; and that they filed the present case in good faith. These are all conclusory statements that reveal nothing about how the debtors' financial or personal circumstances have changed since the dismissal of their prior case or any other reason for the court to find that this case will be concluded with a confirmed plan that will be fully performed.

The debtors do not, for example, explain why their son, who was 22 years old and residing with the debtors during the prior case, did not contribute to the household income at that time, and they provide no evidence that he is willing and able to do so now. The prior case was dismissed after the debtors failed to make their first plan payment, and they did not file amended Schedules I and J or propose an amended plan. In short, the debtors have failed to demonstrate by clear and convincing evidence, as required by § 362(c)(3)(C)(i)(III), that their financial or personal circumstances have changed substantially for the better or any other basis on which to conclude that the present case will be concluded with a confirmed plan that will be fully performed. As a result the court intends to deny the motion, or, in the alternative, to continue the hearing and allow the debtors to supplement the evidentiary record to address the above deficiencies.

The court will hear the matter.

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| 27. | 15-29738-D-13 | JOSEPH CLARK | MOTION TO EXTEND AUTOMATIC STAY |
| | PGM-1 | | 12-29-15 [9] |
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| 28. | 15-27945-D-13 | MOHAMMED ALHAJI-HUSSAINI | CONTINUED MOTION TO DISMISS |
| | RDG-3 | | CASE |
| | | | 12-8-15 [34] |

29. 15-28545-D-13 MONNIE ALEXANDER
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-18-15 [26]

Final ruling:

This case was dismissed on December 23, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

30. 15-28386-D-13 GRAYLING WILLIAMS
GMW-1

OBJECTION TO CONFIRMATION OF
PLAN BY EMJ TRUST
12-23-15 [34]

Final ruling:

This case was dismissed on December 23, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

31. 15-28386-D-13 GRAYLING WILLIAMS
BF-5

OBJECTION TO CONFIRMATION OF
PLAN BY ROUNDPOINT MORTGAGE
12-21-15 [27]

Final ruling:

This case was dismissed on December 23, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

32. 15-28386-D-13 GRAYLING WILLIAMS
BF-5

OBJECTION TO CONFIRMATION OF
PLAN BY ROUNDPOINT MORTGAGE
12-21-15 [30]

Final ruling:

This case was dismissed on December 23, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

33. 15-29594-D-13 KEVIN ORR
LR-1

MOTION TO EXTEND AUTOMATIC STAY
12-29-15 [13]

Tentative ruling:

This is the debtor's motion to extend the automatic stay pursuant to § 362(c) (3) (B) 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.

The court may extend the stay "only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed" § 362(c) (3) (B). A case is presumptively not filed in good faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the prior case or any other reason to conclude that the later case will be concluded with a confirmed plan that will be fully performed. § 362(c) (3) (C) (i) (III). The debtor must establish the case was filed in good faith by clear and convincing evidence. § 362(c) (3) (C).

The debtor has submitted virtually no evidence, by way of declaration or otherwise, as to this case being filed in good faith and, as such, the debtor has failed to carry his evidentiary burden. Accordingly, the court intends to deny the motion.

The court will hear the matter.

34. 15-28395-D-13 BELINDA SMITH
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-18-15 [24]

Final ruling:

This case was dismissed on December 23, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

35. 15-28598-D-13 KENNETH/LISA BERRY
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-18-15 [19]