

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 31, 2017 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. | 16-23803-D-13 | JUSTIN HERRMANN AND | MOTION TO CONFIRM PLAN |
| | SSS-1 | CHRISTINE KYDD-HERRMANN | 12-5-16 [44] |

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 "attached" list referred to in the proof of service is not attached so there is no evidence any of the several creditors filing proofs of claim in this case were served and no evidence that other scheduled creditors were served; thus, the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b); and (2) the notice of hearing fails to provide the cautions required by LBR 9014-1(d)(4).

As a result of these service and notice defects, the motion will be denied 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.

2. 16-27303-D-13 SONIA MCDADE THREADGILL OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
12-19-16 [19]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to debtor's claim of exemptions. Moving party is to submit an appropriate order. No appearance is necessary.

3. 16-28207-D-13 ANDREW KNAPP AND GINA MOTION TO VALUE COLLATERAL OF
LRR-1 PEARL OCWEN LOAN SERVICING
12-19-16 [8]

Final ruling:

The matter is resolved without oral argument. This is the debtors' 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 debtors' 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.

4. 16-26608-D-13 SERGY/LEWIS ZACHARY MOTION TO CONFIRM PLAN
PGM-2 12-12-16 [29]

5. 16-25709-D-13 ELEANOR GOMEZ MOTION TO CONFIRM PLAN
BSH-3 12-9-16 [49]

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). The moving party filed her schedules in this case 21 days after she filed her master address list. The schedules included several creditors who had not been listed on the master address list, and the debtor did not amend the master address list to include them. Thus, when she utilized the PACER matrix for service of this motion, those creditors were not included. The creditors not served include the debtor's mortgage lender, the priority creditors listed on Schedule E/F, and two general unsecured creditors on Schedule E/F.

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

6. 16-27112-D-13 ROSA/PABLO AHUMADA
RDG-3

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
12-19-16 [38]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. The debtors have filed opposition, stating they have filed an amended Schedule C, which ordinarily would render the trustee's objection moot. However, the schedule was not filed under cover of an amendment cover sheet and was not otherwise verified, as required by Fed. R. Bankr. P. 1008. As a result, the purported amended schedule was ineffective to constitute an amended schedule of exemptions. As the trustee's objection has merit, and as the debtors have offered no response to the objection other than to file the purported amended schedule, the objection will be sustained by minute order. No appearance is necessary.

7. 11-46613-D-13 MANUEL TORRES
TAW-1

MOTION TO MODIFY PLAN
12-17-16 [47]

8. 16-25219-D-13 DAVID/WIRIBEA ADUAKO
TOG-4

MOTION TO CONFIRM PLAN
12-6-16 [47]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The trustee filed opposition and the debtors then filed a purported withdrawal of the motion, stating they intend to submit a second amended plan. The withdrawal comes too late under Fed. R. Civ. P. 41(a); however, the court construes the purported withdrawal as an acknowledgment that in light of the trustee's opposition, the debtors do not wish to proceed with this motion. Accordingly, the motion will be denied by minute order. No appearance is necessary. The court cautions the debtors' counsel, however, that the present motion was not served on a secured creditor, Central State Credit Union, or on BLR Commercial Real Estate, listed on the debtors' Schedule G. Thus, the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b).

9. 16-25219-D-13 DAVID/WIRIBEA ADUAKO
TOG-5

OBJECTION TO CLAIM OF WELLS
FARGO BANK, N.A., CLAIM NUMBER 3
12-12-16 [57]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

10. 11-46220-D-13 FRANK CURRIER MOTION TO VALUE COLLATERAL OF
CJY-3 WELLS FARGO BANK
1-4-17 [53]
11. 16-26723-D-13 BUU TRUONG CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-5-16 [14]
12. 16-27328-D-13 GLORIA REYES OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER,
CHAPTER 13 TRUSTEE
12-30-16 [14]
13. 14-28732-D-13 ALFREDO GOMEZ AND MARIA OBJECTION TO CLAIM OF BANK OF
ERG-1 PENA THE WEST, CLAIM NUMBER 3
12-5-16 [39]

Final ruling:

This is the debtors' objection to the claim of Bank of the West (the "West"). The objection will be overruled for the following reasons: (1) the moving parties served the Bank at the address on its proof of claim but not at the different address on the debtors' Schedule D, as required by LBR 3007-1(c); (2) the notice of hearing does not state the address of the courthouse where the hearing is to be held; and (3) the proof of service is signed under oath only as to the declarant's age and citizenship and not as to the facts of service, as required by 28 U.S.C. § 1746.

The court will overrule the objection for the additional independent reason that it is not supported by evidence sufficient to overcome the prima facie validity afforded the claim by Fed. R. Bankr. P. 3001(f), and thus, to demonstrate the moving parties are entitled to the relief requested, as required by LBR 9014-1(d)(7). The proof of claim, filed October 6, 2014, states the amount of the claim as \$24,383.38, including pre-petition arrears of \$5,836.79. The debtors now testify, almost two and a half years later, that they "object to the claim because [they] have an agreement with Bank of the West to pay \$150.00 per month on a loan balance of \$14,360.47 with no arrears." Debtors' Decl., DN 41, at 1:23-24. They have filed as an exhibit what appears to be a memorandum from the Bank listing the payment amount as \$150 and the current balance as \$14,360.47. The memo is dated November 1, 2016.

The memo may well represent the parties' agreement, although not approved by the court, as of November 1, 2016; it says nothing about the amount of the claim as of the petition date or the arrearage portion of the claim as of that date. A proof of claim is supposed to evidence the amount and status of a claim as of the date the debtor's petition is filed, not as that amount and status have been modified since that date by either the parties' agreement or the claimant's treatment under the plan. Because the debtors have failed to establish that the claim amount or the arrearage portion of the claim or both were incorrect at the time the petition was filed, they have failed to overcome the prima facie validity of the claim.

For the reasons stated, the objection will be overruled by minute order. No appearance is necessary.

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| 14. | 14-28732-D-13 | ALFREDO GOMEZ AND MARIA | MOTION TO MODIFY PLAN |
| | ERG-2 | PENA | 12-5-16 [43] |

Final ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The motion will be denied for the following reasons: (1) the notice of hearing does not state the address of the courthouse where the hearing is to be held; (2) the proof of service is signed under oath only as to the declarant's age and citizenship and not as to the facts of service, as required by 28 U.S.C. § 1746; and (3) the plan was filed only as an exhibit to the motion rather than separately, as required by LBR 3015-1(d)(2).

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

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| 15. | 16-27539-D-13 | PETER HALAMANDARIS | OBJECTION TO CONFIRMATION OF |
| | RDG-1 | | PLAN BY RUSSELL D. GREER |
| | | | 12-30-16 [18] |

16. 14-23842-D-13 ANGELA WARREN-BASS MOTION TO MODIFY PLAN
JCK-8 12-20-16 [141]

17. 16-26642-D-13 MARGARITA COVINGTON MOTION TO SELL
1-3-17 [73]

Final ruling:

This case was dismissed on January 24, 2017. As a result the motion will be denied by minute order as moot. No appearance is necessary.

18. 16-25449-D-13 GLECEK SUASIN MOTION TO CONFIRM PLAN
JCK-2 12-20-16 [34]

19. 16-27152-D-13 ROBERT/SUSANA ANGELE OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
12-19-16 [19]

Final ruling:

This is the trustee's objection to the debtors' claim of exemption of their residence. On January 9, 2017, the debtors filed an amended Schedule C. As a result of the filing of the amended Schedule C, the present objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

20. 16-27453-D-13 GREGORY LEAL AND ANGELIC MOTION TO VALUE COLLATERAL OF
MC-1 MACIAS UNITED CONSUMER FINANCIAL
SERVICES
12-29-16 [12]

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.

21. 16-27456-D-13 KIMBERLY KAMAKEEAINA OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
1-4-17 [13]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

22. 16-28157-D-13 MARK/JEANETTE WEBER MOTION TO AVOID LIEN OF
LRR-1 AMERICAN EXPRESS CENTURION BANK
12-21-16 [8]

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 debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

23. 16-28157-D-13 MARK/JEANETTE WEBER MOTION TO AVOID LIEN OF WELLS
LRR-2 FARGO BANK, N.A.
12-21-16 [13]

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 debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

24. 13-30563-D-13 MARCELINO/LUZVIMINDA MOTION FOR RELIEF FROM
RCO-1 MALVAR AUTOMATIC STAY, MOTION FOR
WELLS FARGO BANK, N.A. VS. RELIEF FROM CO-DEBTOR STAY
AND/OR MOTION FOR ADEQUATE
PROTECTION
1-3-17 [81]
25. 16-28173-D-13 DEBBIE HAYES MOTION TO VALUE COLLATERAL OF
MJH-1 LEHMAN BROTHERS BANK, FSB
12-14-16 [8]
- Final ruling:**
- The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Lehman Brothers Bank, FSB 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 Lehman Brothers Bank, FSB's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.
26. 15-27776-D-13 INGEMAR/JENNIFER TOLENADA MOTION TO MODIFY PLAN
CJY-2 12-16-16 [44]
27. 15-27776-D-13 INGEMAR/JENNIFER TOLENADA MOTION FOR RELIEF FROM
RDW-2 AUTOMATIC STAY AND/OR MOTION
UNCLE CREDIT UNION VS. FOR ADEQUATE PROTECTION
12-21-16 [60]

28. 16-27380-D-13 EFRAIN BARBA
AP-1
OBJECTION TO CONFIRMATION OF
PLAN BY BENEFICIAL FINANCIAL I,
INC
1-4-17 [32]
29. 16-27380-D-13 EFRAIN BARBA
JB-1
OBJECTION TO CONFIRMATION OF
PLAN BY CALIFORNIA STATE BOARD
OF EQUALIZATION
1-4-17 [28]
30. 16-27380-D-13 EFRAIN BARBA
RDG-2
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-30-16 [25]
31. 16-27284-D-13 ROBERT VOLK
RDG-1
OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
12-19-16 [18]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. On January 12, 2017, the debtor filed an amended Schedule C. As a result of the filing of the amended Schedule C, the present objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

32. 16-27485-D-13 MONICA HERRERA
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-30-16 [27]

33. 16-24086-D-13 LORI GREEN
PBG-1

MOTION TO MODIFY PLAN
12-20-16 [29]

34. 15-27290-D-13 ALBERT/MARY HAYNES
JGL-4

MOTION TO MODIFY PLAN
12-15-16 [66]

35. 16-26991-D-13 CLAUDIA LEON-VANDERHAVE
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
12-19-16 [22]

Final ruling:

This is the trustee's objection to the debtor's claim of exemption of certain assets. On December 21, 2016, the debtor filed an amended Schedule C. As a result of the filing of the amended Schedule C, the present objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

36. 14-24994-D-13 LEAH CLEVELAND
PLG-1

MOTION TO APPROVE LOAN
MODIFICATION
1-3-17 [44]

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 approve loan modification is supported by the record. As such the court will grant the motion to approve loan modification by minute order. No appearance is necessary.

37. 16-27397-D-13 YOLANDA BURGIN
APN-1

OBJECTION TO CONFIRMATION OF
PLAN BY SANTANDER CONSUMER USA,
INC.
1-4-17 [44]

38. 16-27397-D-13 YOLANDA BURGIN
DWE-1

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
1-4-17 [40]

39. 16-27397-D-13 YOLANDA BURGIN
PGM-2

MOTION TO VALUE COLLATERAL OF
WHEELS FINANCIAL GROUP, LLC
12-29-16 [27]

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.

40. 16-27397-D-13 YOLANDA BURGIN
PGM-3

MOTION TO VALUE COLLATERAL OF
CALHFA MORTGAGE ASSISTANCE
CORPORATION

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of CALHFA Mortgage Assistance Corporation 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 Wheels Financial Group, LLC's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

41. 16-27397-D-13 YOLANDA BURGIN
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-30-16 [37]

42. 15-00203-D-0 OPUS WEST CORPORATION
RCH-1

CONTINUED ORDER ON MOTION FOR
EXAMINATION
10-13-16 [11]

CLOSED: 12/07/2015

43. 16-28408-D-13 AIDA STELLA UMITIN
CLH-1

MOTION TO VALUE COLLATERAL OF
LENDMARK FINANCIAL SERVICES,
LLC
1-10-17 [8]

44. 17-20024-D-13 CARL CARMICHAEL
GMW-2

MOTION TO IMPOSE AUTOMATIC STAY
1-17-17 [12]

Tentative ruling:

This is the debtor's motion to impose the automatic stay pursuant to § 362(b)(4). The court intends to deny the motion for the following reasons: (1) the moving party served only the motion and not the notice of hearing or supporting declaration; and (2) the moving party failed to serve the creditor that is likely to be most affected by the imposition of the stay in a manner reasonably calculated to effect actual notice. The moving party served Chase Bank at a post office box address in Wilmington, Delaware, whereas according to its objection to confirmation, opposition to the debtor's motion to confirm a plan, and opposition to the debtor's motion to value collateral in the prior case, the actual creditor is U.S. Bank, represented by a law firm in San Diego. The moving party failed to serve this motion on U.S. Bank through that firm or at all.

The court also notes that if the notice of hearing had been served, it would have provided incorrect information. The notice of hearing gives the address of the courthouse where the hearing is to be held as 500 "I" Street, not 501 "I" Street. It is especially important that the correct address be given in a notice of hearing of a motion brought under LBR 9014-1(f)(2), which contemplates that opposition may be presented at the hearing.

Finally, the motion does not request the appropriate relief. The motion refers to three prior cases filed by the debtor and requests the court impose the automatic stay pursuant to § 362(c)(4), whereas two of the prior cases were filed and dismissed more than one year prior to the filing of this case. Thus, the relief sought should have been to extend the stay pursuant to § 362(c)(3).

For the reasons stated, the motion will be denied. The court will hear the matter.

45. 15-27776-D-13 INGEMAR/JENNIFER TOLENADA
RDW-1
UNCLE CREDIT UNION VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
12-20-16 [52]