

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

February 13, 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. | 16-28207-D-13 | ANDREW KNAPP AND GINA | MOTION TO MODIFY PLAN |
| | LRR-2 | PEARL | 12-21-17 [37] |

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 moving parties served the motion, plan, declaration, and amended schedules, but not the notice of hearing; (2) the moving parties failed to serve the creditors filing Claim Nos. 1 and 2 at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); (3) the moving parties failed to serve Ocwen Loan Servicing, listed on their Schedule D as holding a second deed of trust against their real property, at all; and (4) with one exception, the moving parties failed to serve any of the creditors listed on their Schedule E/F at all.

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

2. 15-20214-D-13 JAMES/DIANA MARTINEZ MOTION FOR RELIEF FROM
BER-1 AUTOMATIC STAY
FINANCIAL CENTER CREDIT 12-26-17 [35]
UNION VS.
3. 15-20214-D-13 JAMES/DIANA MARTINEZ MOTION FOR RELIEF FROM
BER-2 AUTOMATIC STAY
FINANCIAL CENTER CREDIT 12-27-17 [42]
UNION VS.
4. 14-31015-D-13 ROBERT/DANIELLE SIMPSON MOTION TO MODIFY PLAN
LRR-3 12-19-17 [50]
5. 17-25223-D-13 JATINDER KLAIR MOTION TO CONFIRM PLAN
TOG-5 12-29-17 [102]

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.

6. 16-21825-D-13 JUAN/NADINE MORGA
CLH-7

CONTINUED MOTION TO MODIFY PLAN
11-6-17 [129]

7. 17-27731-D-13 NICOLE CHAVEZ
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-12-18 [30]

Final ruling:

This case was dismissed on January 31, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

8. 17-26232-D-13 ANTON/VERANIKA LOVE
MJD-2

MOTION TO AVOID LIEN OF STATE
OF CALIFORNIA EMPLOYMENT
DEVELOPMENT DEPARTMENT
1-11-18 [25]

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, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

9. 16-23442-D-13 CHANTHIDA NIM
KMR-1
WILMINGTON SAVINGS FUND
SOCIETY, FSB VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-16-18 [34]

Final ruling:

This matter is resolved without oral argument. This is Wilmington Savings Fund Society, FSB's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that the creditor's interest in the subject property is not adequately protected. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

10. 17-26044-D-13 CAROLL THOMPSON
RDG-5

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
12-29-17 [64]

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 debtor's claim of exemptions. No appearance is necessary.

11. 17-22850-D-13 BLANCA AMADOR
RWF-3

OBJECTION TO CLAIM OF JASON C.
KERTEL
12-14-17 [41]

Tentative ruling:

This is the debtor's objection to the claim of Jason C. Kertel (the "claimant"), Claim No. 3 on the court's claims register. The claimant has filed opposition. For the following reasons, the objection will be sustained.

The debtor objects to the claim only as to the claimed priority status and asks that the claim be allowed as a general unsecured claim. The debtor points out that nothing in the original proof of claim or the three amended claims demonstrates the claim is entitled to priority in bankruptcy. All four claims cite § 507(a)(7) of the Bankruptcy Code as the subsection under which priority is claimed. That subsection allows priority for claims "to the extent of \$2,850 . . . arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of [the claimants], that were not delivered or provided." The claimant's claim does not fall in that category or any other category of claims afforded priority under the Bankruptcy Code.

The claim is based on a state court judgment in favor of the claimant and against the debtor for \$10,075. (According to the claim, the amount is now up to \$10,140 and the debtor does not object to the amount.) The claimant submitted with his opposition a copy of the state court's Statement of Decision, which reveals the judgment was for the value of an engagement ring (as limited by the jurisdictional limit of the small claims court) that had been given by the claimant to the debtor. Pursuant to Cal. Civ. Code § 1590, the court ordered the debtor to return the ring by March 31, 2017 or pay the claimant \$10,000 plus court costs.

Nothing in this factual scenario demonstrates the claim is entitled to priority treatment. The claim is not on account of the deposit of money in connection with the purchase, lease, or rental of property, or the purchase of services. The claim does not fall within any of the categories of claims itemized in § 507. The claimant contends the state court judge found the debtor guilty of misleading the court about the ring; that the debtor provided false financial statements to that court in connection with her claim of exemption in response to the claimant's attempt to garnish her wages; that the debtor improperly filed a second claim of exemption in order to delay the wage garnishment process while she prepared her bankruptcy documents; and that by filing this bankruptcy case, the debtor has protected assets of the claimant on which she had earlier taken out title loans, while not paying the claimant. None of those contentions bears on the issue of

whether the claim has priority over other claims under bankruptcy law. The debtor concludes by stating, "This Debt was incurred by fraud or willfull and malicious acts by [the debtor]," and "This Debt should be considered Non Dischargeable." Those issues, as well, are not before the court in this matter and the court will not consider them at this time.

For the reasons stated, the court intends to sustain the objection, disallow the claim as a priority claim, and allow it as a general unsecured claim. The court will hear the matter.

12. 17-23259-D-13 ANTHONY WALTHALL
SLH-1

MOTION TO MODIFY PLAN
12-29-17 [24]

Final ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied because the moving party failed to use the current form of the chapter 13 plan, required in this district as of December 1, 2017 by General Order 17-03. The motion will be denied by minute order. No appearance is necessary.

13. 17-26662-D-13 KATHERINE SOUZA
RKW-2

MOTION TO CONFIRM PLAN
12-27-17 [55]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The court is not prepared to consider the motion because the moving party failed to serve Russell Lavarias, listed on her Schedule H as the debtor's co-debtor on the two debts secured by her residence. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes parties who are co-debtors on debts of the debtor. In addition, the debtor has failed to comply with Fed. R. Bankr. P. 1007(a)(1), which requires debtors to include on their master address the names and addresses of all parties included or to be included on their schedules, including Schedule H. Further, the debtor scheduled her co-debtor "c/o Katherine E. Silva," rather than in his own name.

In her reply to the trustee's opposition, the debtor asks that the court continue the hearing to the first chapter 13 calendar in March to permit the debtor to obtain the documents requested by the trustee. The court will instead continue the hearing to March 27, 2018 at 10:00 a.m., the debtor to file a notice of continued hearing and serve it, together with the motion, proposed plan, and supporting declarations, on Russell Lavarias (himself and not c/o the debtor). The hearing will be continued by minute order. No appearance is necessary on February 13, 2018.

14. 17-24065-D-13 MARY CRUZ
TOG-2

MOTION TO CONFIRM PLAN
12-28-17 [76]

Final ruling:

This is the debtor's motion to confirm a second amended plan. On January 30, 2018, the debtor filed a third amended plan and a motion to confirm it. As a result of the filing of the third amended plan, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

15. 17-27467-D-13 MAHMADHUSAN ULLHA
JCK-1

MOTION TO CONFIRM PLAN
1-4-18 [13]

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.

16. 17-27473-D-13 SANDRA MACANAS
RDG-3

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
12-29-17 [28]

Final ruling:

This case was dismissed on January 31, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

17. 17-27693-D-13 ANTHONY MOORE
EGS-1

OBJECTION TO CONFIRMATION OF
PLAN BY GUILD MORTGAGE COMPANY
1-17-18 [46]

18. 17-27693-D-13 ANTHONY MOORE
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-12-18 [36]

19. 17-27194-D-13 JESSICA GUERRERO
RDG-1

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
12-18-17 [14]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. On December 26, 2017, the debtor filed an amended Schedule C. As a result of the filing of the amended Schedule C, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

20. 17-28302-D-13 DANIEL LOPEZ
MC-1

MOTION TO AVOID LIEN OF
SPRINGLEAF FINANCIAL SERVICES,
INC.
1-30-18 [15]

21. 16-21940-D-13 JUAN/KIMBERLY MARTINEZ
PGM-2

CONTINUED MOTION TO MODIFY PLAN
10-31-17 [41]

Tentative ruling:

This is the debtors' motion to extend the automatic stay, pursuant to § 362(c)(3)(B) of the Code. The motion was brought pursuant to an order shortening time; thus, the court will entertain opposition, if any, at the hearing. However, for the following reasons, the court intends to deny the motion.

Debtor Radhey Shyam testifies in support of the motion that, although he timely provided their attorney - the same attorney they have in the present case - with all the documents he requested, the attorney told him he had not provided the trustee with a Class 1 Checklist until the night before the hearing on the trustee's motion to dismiss. The court notes that, in addition to the failure to provide a Class 1 Checklist, the trustee's motion to dismiss the prior case was also based on the debtors' filing of a plan that was incomprehensible for two reasons - it failed to state the plan term and the amount of the plan payment could not be determined (because it did not have a decimal point, it was listed as \$2,96100). Further, the court noted at the hearing on the motion to dismiss the prior case that the debtors had filed an amended plan one week before the hearing but had failed to set it for hearing.

In the present case, the trustee has filed a motion to dismiss, set for hearing on February 27, 2018, on the grounds of filing an incomprehensible plan and failing to provide a Class 1 Checklist - the same as the grounds for the motion to dismiss the prior case. (The debtors' plan filed in this case has a comprehensible plan payment amount but, as with the plan in the prior case, it does not list a plan term.) The motion to dismiss the present case does not inspire confidence in the debtors' ability to obtain confirmation of a plan without unreasonable delay.

The debtors are relying as an additional ground for this motion on the fact that debtor Radhey Shyam, who was unemployed when the prior case was filed, has now obtained full-time employment. He testifies, "I believe this substantial change in our financial affairs will result in the present case being concluded with a confirmed plan that will be fully performed." Debtor's Decl., DN 17, ¶ 6. This is indeed a substantial change in the debtors' financial affairs because, whereas the debtors listed Mr. Shyam's income in their prior case as \$0, their schedules in this new case show him earning \$14,300 per month gross, \$10,010 net. At the same time, their schedules in this case state that debtor Lilliam Shyam is currently on disability; they show her income as \$1,950 in unemployment compensation, whereas in the prior case, she had been earning \$3,170 in net wages. Thus, although her income has dropped, his income has increased dramatically. Thus, the household's income has increased from \$3,170 total to \$11,960 total, an increase of almost \$8,800 per month. Their expenses have increased only slightly, such that their Schedule J in the present case shows monthly net income of \$7,225 (\$11,960 - \$4,735).

Yet despite this dramatic increase in income, the debtors propose to increase their plan payment by only \$93 per month over the amount proposed in their amended plan in the prior case, apparently due to an increase in their mortgage arrears. Thus, they propose a plan payment of only \$3,054 out of their \$7,225 in monthly net income, retaining for themselves the difference, \$4,171 per month, while continuing to propose a 0% dividend to unsecured creditors. As the debtors' proposed plan was filed just nine days prior to the hearing date of this motion, and the meeting of

creditors has not yet been set, the trustee and creditors have not had an opportunity to weigh in on it and it is possible the issue of the disposable income test will not come up. However, as the debtors have raised the issue of the "substantial change in [their] financial affairs" in support of this motion, the court finds it appropriate to consider, in determining whether this case was filed in good faith, the fact that despite that substantial change for the better, the debtors are proposing to share none of it with their unsecured creditors.

For the reasons stated, the court concludes the debtors have failed to demonstrate, by clear and convincing evidence, that the case has been filed in good faith, and the motion will be denied. The court will hear the matter.