

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

February 26, 2019 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.	18-26205-D-13 PGM-2	ANGEL/ANGELIQUE ESQUEDA	MOTION TO CONFIRM PLAN 1-18-19 [42]
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2.	18-26406-D-13 PGM-1	GEORGE/ELIZABETH TAUMOEPEAU	MOTION TO CONFIRM PLAN 1-20-19 [43]
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3. 18-26115-D-13 ANTHONY GOMEZ
GS-1

MOTION TO CONFIRM PLAN
1-30-19 [33]

Tentative 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 party filed the motion and notice of hearing almost two months after the plan was filed, contrary to LBR 3015-1(d)(1), and there is no evidence the plan was served at all, as required by the same rule; (2) the moving party gave only 27 days' notice of the hearing rather than 35 days', as required by LBR 3015-1(d)(1) and applicable rules; (3) the moving party 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); (4) the moving party failed to serve the Social Security Administration at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b); and (5) the proofs of service of the motion and amended notice of hearing are filed as attachments to the same rather than separately, as required by LBR 9004-2(e)(1) and (2) and 9014-1(e)(3), and do not contain a caption page or docket control number, as required by LBR 9004-2(b)(5) and (6).

As a result of these service and notice defects, the court intends to deny the motion. The court will hear the matter.

4. 18-26115-D-13 ANTHONY GOMEZ
RDG-2

CONTINUED MOTION TO DISMISS
CASE
1-8-19 [24]

5. 13-34116-D-13 ROBERT/TINA BREEDLOVE
EJS-2

MOTION TO INCUR DEBT
1-31-19 [63]

6. 18-26721-D-13 KEITH JOHNSTON CONTINUED OBJECTION TO
RDG-2 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-21-18 [28]

7. 18-27721-D-13 KHAMPHAY KHANSOUVONG OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
1-28-19 [15]

8. 18-24845-D-13 VICTOR HERRADA CONTINUED MOTION TO CONFIRM
PGM-3 PLAN
12-7-18 [57]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The hearing was continued from January 22, 2019 for the moving party to correct certain service defects. However, despite the fact that the court, before selecting the continued hearing date, asked the debtor's counsel how much time he would need to give proper notice, counsel waited until January 30, 2019 before filing and serving the notice of continued hearing and related documents, thereby giving the previously-omitted creditors only 27 days' notice of the hearing rather than the 35 days' notice required by LBR 3015-1(d)(1) and applicable rules.

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

9. 17-26647-D-13 ESMERALDA GARCIA MOTION TO MODIFY PLAN
JCK-1 1-15-19 [28]

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.

10. 17-26248-D-13 MIKE/TRUC VO
TOG-2

MOTION TO MODIFY PLAN
1-18-19 [46]

11. 18-27660-D-13 KENNETH/TOMIKA JOHNSON
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-28-19 [20]

12. 18-27660-D-13 KENNETH/TOMIKA JOHNSON
RK-1

MOTION TO AVOID LIEN OF
AMERICAN EXPRESS BANK, FSB
1-29-19 [23]

Final ruling:

This is the debtors' motion to avoid a purported judicial lien held by American Express Bank, FSB ("American Express"). The motion will be denied because the debtors have not submitted evidence establishing its factual allegations and demonstrating they are entitled to the relief requested. Specifically, they have not shown that American Express has a judicial lien. In order to avoid a judicial lien, "the debtor must make a competent record on all elements of the lien avoidance statute, 11 U.S.C. § 522(f)" (In re Mohring, 142 B.R. 389, 391 (Bankr. E.D. Cal. 1992)), including that the creditor has a lien that is a judicial lien. Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting Mohring, 142 B.R. at 392. Here, the debtors have submitted a copy of a judgment in favor of American Express, but there is no admissible evidence an abstract of the judgment was ever recorded.

The debtors have described their exhibit as a "Superior Court Stamped and Recorded Abstract of Judgment." The exhibit does indeed bear the stamp of the San Joaquin County Superior Court. However, it bears no stamp of any recorder's office and no recording information. "The operative principle here is that although bankruptcy confers substantial benefits on the honest but unfortunate debtor, including a discharge of debts, the ability to retain exempt property, and the ability to avoid certain liens that impair exemptions, there is a price." Mohring, 142 B.R. at 396. Obtaining a copy of a recorded abstract of judgment seems a small price to pay to avoid an otherwise valid and enforceable property interest.¹

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

1 The joint debtor testifies that American Express "obtained an involuntary judicial lien and executed it by recording an abstract of Judgment in the County of Sacramento for the sum of \$9,918.35 against my home located at [address] in San Joaquin County. See Exhibit A." The testimony is inadmissible and/or defective for three reasons. First, it is hearsay. Second, because it is based on Exhibit A, which is a copy of an unrecorded abstract of judgment, the testimony is without foundation and may well be inaccurate. Third, if the abstract was recorded in Sacramento County, as the joint debtor says, it did not create a lien on the debtors' property in San Joaquin County. Cal. Code Civ. Proc. §§ 697.310(a), 697.340(a).

13. 18-27660-D-13 KENNETH/TOMIKA JOHNSON MOTION TO AVOID LIEN OF
RK-1 AMERICAN EXPRESS BANK, FSB
1-29-19 [28]

Final ruling:

This motion will be denied by minute order as the moving papers, DNs 28-32, are exact duplicates of those filed at DNs 23-27. No appearance is necessary.

14. 14-30269-D-13 KEVIN DICKERSON AND MOTION TO MODIFY PLAN
MC-2 SHELBY CABILES 1-17-19 [53]

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.

15. 18-25872-D-13 TAMMY WILLIAMS MOTION TO CONFIRM PLAN
1-14-19 [32]

Tentative ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because there is no proof of service on file and it is too late for a proof of service to be filed. See LBR 9014-1(e)(2) (proof of service must be filed with the documents served or within three days thereafter).

As a result of this service defect, the motion will be denied by minute order. The court will hear the matter.

16. 18-27672-D-13 STEPHANIE TEMPLETON
AP-1

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
1-30-19 [33]

Final ruling:

This is the objection of Wells Fargo Bank to confirmation of the debtor's proposed chapter 13 plan. On February 13, 2019, the debtor filed a statement that she does not oppose the objection and will be filing an amended plan. Because the debtor does not contest the objection, the objection will be sustained by minute order. No appearance is necessary.

17. 17-26777-D-13 MARLENE DOUGLAS
PGM-3

MOTION TO MODIFY PLAN
1-20-19 [66]

18. 18-26180-D-13 AIDE ABARCA
RDG-1

OBJECTION TO CLAIM OF CITIBANK,
N.A., CLAIM NUMBER 7-1
1-15-19 [18]

19. 18-24984-D-13 MIKE/OLIVIA BANUELOS
CJO-1
ROUNDPOINT MORTGAGE
SERVICING CORPORATION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-25-19 [56]

20. 17-27386-D-13 MARGARITA SALDANA
JCK-1

MOTION TO MODIFY PLAN
1-17-19 [21]

21. 18-24992-D-13 LIDIA QUEZADA
BLF-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BAKKEN LAW FIRM
FOR LORIS L. BAKKEN, TRUSTEE'S
ATTORNEY(S)
1-22-19 [57]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

22. 18-24992-D-13 LIDIA QUEZADA
BLF-4

MOTION FOR COMPENSATION FOR
GARY R. FARRAR, CHAPTER 7 TRUSTEE
1-22-19 [63]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code §§ 326 and 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

23. 18-24992-D-13 LIDIA QUEZADA
BLF-5

MOTION FOR COMPENSATION FOR
REMAX EXECUTIVE, REALTOR
1-22-19 [69]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

Tentative ruling:

This is the debtor's second motion filed in this case to extend the automatic stay pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The debtor, however, has been a debtor in two prior cases that were pending and dismissed within the year prior to the filing of the present case. Thus, the court will construe the motion, as it did the debtor's first motion, as a motion to impose the automatic stay pursuant to § 362(c)(4)(B) of the Code.

This second motion will be denied because it was not filed within 30 days after the filing of this case, as required by § 362(c)(4)(B). The motion will be denied for the additional independent reason that the debtor has failed to rebut by clear and convincing evidence the presumption, raised under all three factors set forth in § 362(c)(4)(D)(i), that the present case was not filed in good faith. The presumption arises in this case because (1) the debtor was a debtor in two previous cases pending within the one-year period; (2) at least one of the previous cases was dismissed after the debtor failed to timely file the required documents without substantial excuse (see below); and (3) there has not been a substantial change in the debtor's financial or personal affairs or any other reason to believe this case will be concluded with a confirmed plan that will be fully performed.

The debtor's primary arguments are (1) that she mailed the required documents in the prior case by U.S. priority mail and believed they would arrive at the court on time; and (2) that because it was the first time she had filed for bankruptcy, she did not understand exactly how to process the paperwork and could not afford an attorney to assist her, so she began to research chapter 13 on the Internet. The arguments may have carried some weight after a single prior filing but here, the debtor has had two prior cases dismissed within the year preceding the filing of the present case and both were dismissed for failure to timely file the required documents.

Finally, the lack of progress in this case casts doubt on the likelihood the debtor will be able to obtain confirmation of a plan. The trustee objected to confirmation of the debtor's original plan on ten different grounds and the creditor holding a deed of trust on the debtor's residence objected on two grounds. The court sustained the trustee's objection on January 23, 2019 and overruled the creditor's objection as moot. On the same day, the debtor filed an amended plan but did not file a motion to confirm it and still has not done so. On February 11, 2019, the trustee filed a motion to dismiss the case, set for hearing on the 10:30 calendar on this date, for failure to set a hearing on a motion to confirm the amended plan and for failure to make payments under the proposed plan. According to the trustee's motion, the debtor was delinquent in the amount of \$3,170 as of February 8, 2019. These facts directly contradict the conclusion the court would need to draw in order to impose the automatic stay - that the debtor is likely to be able to confirm and complete a plan in this case.

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

25. 18-23696-D-13 JALEAIL NABIZADAH
CAS-1
FINANCIAL SERVICES VEHICLE
TRUST VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
12-20-18 [35]