

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

March 17, 2015 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. | 14-30501-D-13 DENNIS/GLORIA THRELKELD | MOTION TO VALUE COLLATERAL OF  |
|    | JCK-3                                 | ARKANSAS DEPARTMENT OF FINANCE |
|    | Final ruling:                         | AND ADMINISTRATION             |
|    |                                       | 2-6-15 [40]                    |

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.

- |    |                              |                                |
|----|------------------------------|--------------------------------|
| 2. | 14-32307-D-13 JOSE HERNANDEZ | OBJECTION TO DEBTOR'S CLAIM OF |
|    | RDG-3                        | EXEMPTIONS                     |
|    | Final ruling:                | 2-9-15 [28]                    |

This is the trustee's objection to the debtor's claim of exemptions. The trustee objected on the ground that the debtor had failed to file a spousal waiver to permit him to use the exemptions provided by Cal. Code Civ. Proc. § 703.140(b). On February 11, 2015, the debtor filed a spousal waiver in the appropriate form signed by the debtor and his spouse. As a result of the filing of the spousal

**waiver, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.**

3. 14-26614-D-13 VALERIA LABORDE  
RDG-3

CONTINUED MOTION TO RECONVERT  
CASE FROM CHAPTER 13 TO CHAPTER  
7  
11-4-14 [50]

**Final ruling:**

**Motion withdrawn by moving party. Matter removed from calendar.**

4. 14-32516-D-13 TINA VAZQUEZ  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
2-20-15 [25]

5. 10-50221-D-13 DARYL REBERO  
MLP-4

MOTION TO MODIFY PLAN  
1-30-15 [66]

6. 14-25132-D-13 KAREN CLEARY  
RLG-5

CONTINUED MOTION TO CONFIRM  
PLAN  
11-25-14 [75]

7. 14-25132-D-13 KAREN CLEARY  
RLG-7

MOTION TO APPROVE LOAN  
MODIFICATION  
2-6-15 [102]

**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.

8. 14-31633-D-13 CRAIG VINCENT  
JCK-3

MOTION TO CONFIRM PLAN  
2-6-15 [51]

9. 15-20040-D-13 JUGJEEV/MINERVA MANGAT  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
2-20-15 [38]

10. 14-28148-D-13 CESAR/BETTY DEL ROSARIO  
JCK-10

MOTION TO CONFIRM PLAN  
1-27-15 [87]

**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.

11. 14-23451-D-13 ERNESTO/MARIA ORTEGA MOTION TO CONFIRM PLAN  
TOG-8 1-23-15 [80]

**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.

12. 14-29854-D-13 FABIAN PELAYES AND MOTION TO VALUE COLLATERAL OF  
PLL-2 DEOLINDA MOYANO CITIBANK, N.A.  
2-17-15 [52]

**Final ruling:**

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Citibank, N.A. 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 Citibank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

13. 11-48255-D-13 RONALD SIEGEL MOTION TO MODIFY PLAN  
CJY-2 1-29-15 [50]

**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.

14. 12-34855-D-13 MARK/STEPHANIE AMENDED MOTION TO MODIFY PLAN  
JCK-4 VILLALPANDO 2-13-15 [71]

**Tentative ruling:**

This is the debtors' motion to confirm a modified chapter 13 plan. The trustee has filed opposition. For the following reasons, the motion will be denied.

Under the debtors' existing plan, confirmed in November of 2012, they were to make plan payments of \$3,590 per month for 60 months, resulting in a 100% dividend to general unsecured creditors. A year later, in November of 2013, the debtors proposed to modify their plan to reduce their plan payment to \$3,000 per month and the dividend to 58%. The debtors proposed that modification on the basis of a decrease in income of debtor Stephanie Villalpando. The trustee objected to the modification on the grounds that (1) the debtors' amended Schedule I showed they were continuing to contribute \$1,032 per month to their voluntary TSPs, which the trustee contended was not reasonable or necessary in any amount, but especially in light of the proposed decrease in the dividend; and (2) the debtors were continuing to make a \$216 per month payment toward a TSP loan that was scheduled to be paid off in December of 2014, whereas the debtors had not proposed to increase their plan payment once that loan was paid off.

The court concluded that the debtors had failed to meet their burden of demonstrating that the plan had been proposed in good faith. The court noted that the debtors were also continuing to repay two other TSP loans at a total of \$721 per month. In other words, whereas they were proposing a significant reduction in the dividend to their creditors, they proposed to continue contributing to two TSPs and repaying three TSP loans at the same rates as before, and had not proposed to increase their plan payment even after one of the loans was paid off. Thus, the court denied the motion to modify the plan, and for a year, the debtors did not file a new motion.

On December 4, 2014, the trustee filed a notice of default and intent to dismiss case, indicating that the debtors had fallen behind in their plan payments. On December 11, 2014, the debtors filed a motion to modify their plan, along with amended Schedules I and J. The amended Schedule I continued to reflect the \$1,500 drop in income for Stephanie Villalpando that was reflected in their November 2013 amended schedules. However, this time, the amended Schedule J showed voluntary contributions to the debtors' TSPs as reduced from \$1,032 to \$63 per month. It continued to show the \$216 TSP loan repayment on the loan that was to be paid off in December of 2014, along with the \$721 in longer-term TSP loan repayments. The debtors stated in their supporting declaration that their income had remained the same but that they had fallen behind due to certain high living expenses, including a sizeable plumbing repair bill.

For unexplained reasons, on December 31, 2014, 20 days after they had filed the motion and amended Schedules I and J, the debtors filed an amended motion and a further amended plan, along with a further amended set of Schedules I and J. They also filed an amended declaration that was almost identical to the one they had filed with the motion 20 days earlier. In the new declaration, the debtors again stated that their income had not changed, and that they had experienced certain high living expenses, including the plumbing bill. However, on the newly-amended Schedule I, the debtors showed Stephanie Villalpando's income as \$1,545 higher than listed on the amended Schedule I filed just 20 days earlier, on December 11. And, as if to offset that increase, they added back in the full \$1,032 in voluntary TSP contributions the trustee had objected to a year earlier. They also kept the \$216 TSP loan repayment on the loan that was supposed to be paid off in December of 2014.

The trustee filed the same opposition to the new motion he had filed a year

earlier; that is, he objected on the grounds that (1) the debtors were continuing to contribute \$1,032 to a voluntary TSP, an expense the trustee contended was not reasonable or necessary in any amount; and (2) they were still showing \$216 toward a TSP loan that should have already been paid off. In a final ruling, the court agreed with the trustee that the \$1,032 in voluntary TSP contributions were not reasonable or necessary in any amount. The court also expressed concern that the debtors were continuing to report the \$216 per month deduction for a TSP loan that was supposed to be paid off a month before the hearing date. Thus, the court denied the motion on the basis of lack of good faith. The court also noted the obvious unreliability of the debtors' various sets of Schedules I and J, such as the significant discrepancies between Stephanie Villalpando's income as reported on December 11, 2014, \$3,900, and as reported just 20 days later, \$5,445, both filed at a time when the debtors declared under oath that their income had not changed, and their decision to add back the \$1,032 in voluntary retirement contributions when they realized they had, apparently, underreported her income.

With this new motion, the debtors have filed further amended Schedules I and J in which they continue to show the \$1,032 in voluntary TSP contributions and the \$216 per month deduction for the TSP loan that was to be paid off in December 2014. They show certain expenses - home maintenance, laundry and dry cleaning, and medical and dental expenses - as reduced by a total of \$216, with a corresponding increase in the proposed plan payment. The trustee has opposed the motion on the grounds that the \$1,032 voluntary TSP contribution is not reasonable or necessary in any amount, and that the \$216 payment toward the TSP loan scheduled to pay off in December 2014 should now be paid into the plan. The trustee concludes that the debtors propose to put unsecured creditors at risk of a decreased dividend in the future, while retaining those benefits for themselves.

The debtors have filed two replies to the trustee's opposition. In their first, filed February 26, 2015, they claimed that the plan proposes to increase the plan payment by \$216 per month in February 2015 - from \$3,463 to \$3,679 - to account for the payment on the TSP loan that was paid off in December 2014. This is not an accurate representation for two reasons. First, according to the trustee's notice of default filed December 4, 2014, the debtors had been paying \$3,646 per month before they went into default, not \$3,463. Thus, they are actually proposing an increase of only \$33, not \$216. Second, as noted above, the debtors report their expenses as reduced by \$216 per month; thus, if the \$216 increase in the plan payment represents the money that was previously going toward the TSP loan repayment, then the \$216 in savings from the reduced expenses is not going into the plan.

In their first response, the debtors also stated they have cancelled the \$1,032 TSP contribution and proposed a second increase - from \$3,679 to \$4,195; that is, an increase of \$516, beginning June 2015. That increase of \$516 represents one-half the \$1,032 TSP contribution the debtors have now cancelled. They propose to keep the other half, \$516 per month, as a "reasonable cushion to handle [the] unexpected expense contingency." Resp., DN 77, at 2:6. The court concludes that the debtors' proposed increase of \$216 per month is actually an increase of only \$33, and that their proposal to retain \$516 per month for unexpected expenses - money they have previously been voluntarily contributing to a TSP account - is not reasonable. Thus, the court concludes the plan has not been proposed in good faith.

Finally, on March 6, 2015, the debtors filed a second reply to the trustee's opposition, stating that debtor Stephanie Villalpando can borrow about \$42,000 from her TSP account. As they will need about \$47,000 to pay off their plan, they will

make payments of \$3,680 each in March and April 2015, and will pay off the plan by May 25, 2015. Depending on the trustee's position, the court is inclined to accept this proposal. Absent this proposal, the court was prepared to and would deny the motion for lack of good faith.

The court will hear the matter.

15.	15-20264-D-13	HUGO PRATT	MOTION FOR RELIEF FROM
	TJS-1		AUTOMATIC STAY
	PENNYMAC HOLDINGS LLC VS.		2-9-15 [19]

**CASE DISMISSED 2/13/15**

16.	13-20466-D-13	RODERICK/BERNADETTE	MOTION TO MODIFY PLAN
	JAD-3	VIRAY	1-15-15 [72]

**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.

17.	13-24666-D-13	ROBERT PINTOR	MOTION TO MODIFY PLAN
	JM-5		1-7-15 [81]

**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. 14-27267-D-13 SARAD/USHA CHAND  
USA-1

MOTION TO CONVERT CASE FROM  
CHAPTER 13 TO CHAPTER 7, MOTION  
TO DISMISS CASE  
2-13-15 [60]

19. 14-26371-D-13 VICTOR/VICKI CHAO  
HN-3

AMENDED MOTION TO CONFIRM PLAN  
1-28-15 [97]

**Final ruling:**

This is the debtors' amended motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons. On December 12, 2014, the debtors filed an amended chapter 13 plan and a motion to confirm it, along with a "notice and opportunity to object" in which they set the matter for hearing on February 3, 2015. The motion (at 1:28-2:2) stated that the amended plan "addresses and satisfies the deficiencies claimed by the Trustee in his sustained Objection to Confirmation (see docket nos. 23, 63 and 77) and Motion to Dismiss (see docket no. 79)." The motion and notice included a docket control number, HN-3. On January 12, 2015, the trustee filed opposition to the motion, in which he set forth eight objections to the plan, including that the debtors had failed to provide a Class 1 Checklist for Class 1 creditor PNC Mortgage and that the plan listed PNC Mortgage in Class 1, but failed to provide for the pre-petition arrears due that creditor, \$27,265 according to PNC Mortgage's proof of claim.

On January 28, 2015, the debtors filed an "amended motion" to confirm an amended plan, along with a "notice of hearing for amended motion" in which they purported to set their "amended motion" for hearing on this date, March 17, 2015. The amended motion and notice contained the same docket control number as the originals, HN-3. The amended motion was identical to the original motion except that it stated (at 1:28-2:2) that the amended plan "addresses and satisfies the deficiencies claimed by the Trustee in his sustained Objection to Confirmation (see docket nos. 23, 63 and 77), Motion to Dismiss (see docket no. 79) and the Trustee's Opposition to Debtor's Motion to Confirm Amended Chapter 13 Plan (see docket no. 95)." In other words, rather than filing a reply to the trustee's opposition to their original motion, the debtors filed an amended motion and a new notice of hearing which purported to re-schedule the hearing for this date. They also filed a new plan (entitled "Amended Chapter 13 Plan," the same title as the plan filed December 12, 2014) in which they moved PNC Mortgage from Class 1 to Class 4. That apparently reflects what was meant in the amended plan by "addressing and satisfying" the deficiencies pointed out in the trustee's opposition. The court,



meanwhile, denied the original motion by final ruling for February 3, 2015 for a variety of service and notice defects.

In response to that ruling, and one business day after it was posted, the debtors filed another notice of hearing for amended motion, again listing the hearing date of March 17, 2015, but purporting to correct the notice defects pointed out in the court's ruling. Like the notices filed December 12, 2014 and January 28, 2014 (and the motion and amended motion), the February 2, 2015 notice included docket control number HN-3. Also on February 2, 2015, the debtors served the amended motion, declarations, and "notice and opportunity to object" on the creditors who have filed claims in this case at the addresses on their proofs of claim and served the creditor who has requested special notice at its designated address, thus purporting to correct the service defects pointed out in the court's ruling.<sup>1</sup>

This court's local rules governing motion practice and chapter 13 practice do not provide for a moving party to respond to opposition by filing an "amended motion" and setting it for hearing on a later date. See LBR 3015-1 and 9014-1. They do not provide for a moving party to correct defects pointed out by an opposing party by filing a plan different from the one that was the subject of their original motion and purporting to seek confirmation by way of an "amended motion." Finally, they do not provide for a moving party to correct defects pointed out in a final ruling denying a motion by filing a duplicate notice of hearing and serving an amended motion on parties not previously served. Instead, if a debtor wishes to seek confirmation of a different plan, he or she must file a new motion to confirm it, which must include a new docket control number. The procedures used by the moving parties here have resulted in the court now having to consider an amended motion when the original motion has already been denied, and have caused confusion on the court's docket of the case.

Because the debtors' motion HN-3 was previously denied, by minute order filed February 4, 2015, there was no longer a pending motion for the debtors to "amend." Thus, this matter will be removed from calendar. No appearance is necessary.

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<sup>1</sup> The notice filed with the original motion, the one filed December 12, 2014, was the only notice entitled "notice and opportunity to object." The notices filed January 28, 2015 and February 2, 2015 were entitled "notice of hearing." Thus, if the February 2, 2015 is correct, the debtors served the December 2, 2014 notice that day, not the February 2, 2015 notice.

20. 14-31371-D-13 MARTIN SALAZAR  
RDG-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
1-5-15 [17]

21. 14-30872-D-13 ARMANDO COVARRUBIAS

CONTINUED MOTION FOR RELIEF

HRH-1  
GENERAL ELECTRIC CAPITAL  
CORPORATION VS.

FROM AUTOMATIC STAY  
1-8-15 [26]

22. 14-30872-D-13 ARMANDO COVARRUBIAS MOTION TO CONFIRM PLAN  
TOG-3 2-2-15 [44]

**Final 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. The motion will be denied by minute order. No appearance is necessary.

23. 10-34977-D-13 MARIA FLORES MOTION TO MODIFY PLAN  
TOG-18 1-22-15 [195]

**Final ruling:**

This case was dismissed on February 18, 2015. As a result the motion will be denied by minute order as moot. No appearance is necessary.

24. 14-30982-D-13 ALBA CRUZ MOTION TO CONFIRM PLAN  
TOG-1 1-13-15 [21]

**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.

25. 14-27983-D-13 JOSE CADIS MOTION TO CONFIRM PLAN  
TOG-3 2-2-15 [52]

26. 15-20984-D-13 JEROME BANKS  
MDZ-1  
U.S. BANK, N.A. VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
2-17-15 [9]

**CASE DISMISSED 3/2/15**

**Final ruling:**

**Motion withdrawn by moving party on March 4, 2015. Matter removed from calendar.**

27. 13-33386-D-13 WILMER/IRVINE JOHNSON  
JCK-4

OBJECTION TO CLAIM OF  
PROGRESSIVE FINANCE, CLAIM  
NUMBER 18  
1-29-15 [65]

**Final ruling:**

**This is the debtors' objection to the claim of Progressive Finance, Claim No. 18 on the court's claims register. On February 9, 2015, Progressive Finance filed a withdrawal of that claim. As a result of the withdrawal of the claim, the debtors' objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.**

28. 14-28986-D-13 MARGARITA GUTIERREZ  
PGM-1

MOTION TO CONFIRM PLAN  
1-23-15 [78]

29. 14-32400-D-13 TINA JOHNSON  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
2-20-15 [24]

**Tentative ruling:**

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. The debtor has filed a reply stating that she concedes each issue raised by the trustee, and will file an amended plan and amended schedules. Based on that reply, the court intends to sustain the trustee's objection.

The court's concern is that the debtor's reply was filed by Brian Haddix as attorney for the debtor, whereas the debtor filed this case in pro se, and Mr. Haddix has not appeared in the case in any manner authorized by the court's local rule, and in particular, has not filed a substitution of attorneys. Until an appearance has been made in a manner authorized by the local rule, any motions filed by Mr. Haddix as the debtor's attorney will be denied as not having been filed by the debtor's attorney of record in the case. The debtor and Mr. Haddix are referred to LBR 2017-1(b)(1) and (2).

The court will hear the matter.

30. 14-32401-D-13 ANDREW BOYLE AND MELANIE  
RDG-1 LEWIS

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
2-20-15 [21]

31. 15-20103-D-13 CHARANJIT SINGH  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
2-20-15 [23]

32. 13-27613-D-13 JAMES/JENNY BRADLEY MOTION TO SELL  
JAD-3 2-27-15 [55]
33. 12-26341-D-13 MARIA GUEL CONTINUED MOTION TO MODIFY PLAN  
JCK-2 1-22-15 [38]
34. 14-32463-D-13 JESSE/DEBRA CARRELL OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
2-20-15 [14]
35. 14-28090-D-13 JOSEPH CLARK CONTINUED MOTION TO CONFIRM  
PGM-3 PLAN  
1-7-15 [64]

36. 15-20091-D-13 SONIA MCDADE-THREADGILL OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
2-20-15 [22]

37. 15-20095-D-13 ALICE HATTON OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
2-20-15 [28]