

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

March 28, 2017 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.	15-28202-D-13	STEVE/SARA LOPEZ	MOTION TO APPROVE LOAN
	RAC-2		MODIFICATION
			2-26-17 [39]

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.

2. 17-20006-D-13 THOMAS/RACHEL ESPARZA OBJECTION TO CONFIRMATION OF  
CJO-1 PLAN BY PENNYMAC LOAN SERVICES,  
LLC  
3-1-17 [18]
3. 15-24507-D-13 LILLIAN GLEASON MOTION TO MODIFY PLAN  
RLG-6 2-10-17 [122]
4. 16-22213-D-13 JESSE/CHRISTINIA M. LOPEZ MOTION TO MODIFY PLAN  
JM-1 2-8-17 [24]

**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.

5. 15-27415-D-13 LORETTA WASHINGTON MOTION TO MODIFY PLAN  
RJ-4 2-17-17 [57]

**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. 16-24617-D-13 JAMES/SYLVIA HANNON  
JCK-1

MOTION TO MODIFY PLAN  
2-20-17 [18]

**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.

7. 16-25219-D-13 DAVID/WIRIBEA ADUAKO  
TOG-5

MOTION TO CONFIRM PLAN  
2-9-17 [82]

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The moving parties filed their schedules three weeks after they filed their petition (pursuant to an order extending time), but when they did so, they failed to amend their master address list, such that when they used the PACER matrix for service of this motion, the matrix did not include Central State Credit Union, which is listed on their Schedule D and provided for by the plan but which had not been listed on their master address list.

As a result of this service defect, the motion will be denied and the court need not address the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

8. 16-26623-D-13 LEZLI STOWERS  
STO-1

MOTION TO CONFIRM PLAN  
1-27-17 [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 either of the creditors who have requested special notice in this case (DNs 9, 23) at their designated addresses, as required by Fed. R. Bankr. P. 2002(g). The court cautions the debtor's counsel that since this motion was filed, another creditor has filed a proof of claim listing a different address from the one at which the creditor was served with this motion. That creditor will need to be served with any future motion at the address on its proof of claim, as required by the same rule.

As a result of this service defect, the motion will be denied and the court need not address the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

9. 16-25228-D-13 PATRICK WOLRIDGE MOTION TO CONFIRM PLAN  
EJV-2 2-8-17 [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 used an outdated PACER matrix for service of the motion, and thus, failed to serve four of the creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g).

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

10. 17-20829-D-13 ALBERTO DELAROSA AND OBJECTION TO CONFIRMATION OF  
PPR-1 ESPERANZA LOREDO PLAN BY U.S. BANK, N.A.  
2-28-17 [19]

**Final ruling:**

This is the objection of U.S. Bank to confirmation of the debtors' proposed chapter 13 plan. Pursuant to the Notice of Chapter 13 Bankruptcy Case filed in this case, objections to confirmation are to be set for April 25, 2017, 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 March 28, 2017. (The debtors and other parties-in-interest are cautioned that this continuance does not apply to the trustee's motion to dismiss this case, set for March 28, 2017 at 10:30 a.m.)

11. 11-49330-D-13 SHANE/DENICE NIELSON MOTION TO MODIFY PLAN  
TPH-2 2-13-17 [41]

12. 12-22345-D-13 ROBERT/JENINE PHIPPEN MOTION FOR WAIVER OF THE  
SDM-2 CERTIFICATION REQUIREMENTS FOR  
ENTRY OF DISCHARGE IN A CHAPTER  
13 CASE (11 U.S.C. 1328)  
2-20-17 [32]

13. 17-20152-D-13 AMY EVANS  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
2-27-17 [24]

**Final ruling:**

This case was dismissed on March 1, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

14. 16-28458-D-13 ERNESTO CASILLAS  
RDG-3

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
2-13-17 [24]

**Final ruling:**

This case was dismissed on March 1, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

15. 16-26671-D-13 JOHN/HASINA HELMANDI  
RM-4

OBJECTION TO CLAIM OF RICHARD  
G. HYPPA, CLAIM NUMBER 4 AND/OR  
MOTION TO DISALLOW CLAIM  
2-10-17 [84]

**Tentative ruling:**

This is the debtors' objection to the claim of Richard Hyppa, Claim No. 4 on the court's claims register. Mr. Hyppa has filed opposition. For the following reasons, the court will continue the hearing and sua sponte lift the automatic stay to permit Mr. Hyppa to file a notice of appeal from a state court order and to allow the parties to litigate the claim to finality in state court.

Mr. Hyppa is the assignee of Pallco Enterprises, Inc. ("Pallco"), an entity that obtained a \$22,914.50 judgment against debtor John Helmandi (the "debtor") and others on April 13, 2006. On April 7, 2016, Pallco (or possibly Mr. Hyppa - it does not matter which) filed an application for and renewal of judgment, to which the debtor responded with a motion to vacate the renewal of the judgment.<sup>1</sup> By order filed September 1, 2016, the state court granted the debtor's motion and vacated the renewal of the judgment on the ground that the court had no jurisdiction to enter the original judgment against the debtor. The debtors contend the September 1, 2016 order was a final judgment to be given res judicata effect, and thus, that Pallco's judgment, now assigned to Mr. Hyppa, "is unenforceable against the debtors and property of the debtors" (Debtors' Obj., DN 84, at 1:28-29) and the claim must be disallowed.

Mr. Hyppa makes two arguments in opposition. First, he contends the order vacating the renewal of the judgment does not mean the debtor is not liable on the claim. In Mr. Hyppa's view, "[t]he vacation of the renewal of the judgment did not affect the original judgment." Mr. Hyppa's Opp., DN 98, at 2:1-2. Thus, Mr. Hyppa claims "the State Court ruling did not establish that [the debtor] did not owe the monies described in the original Judgment . . . ." Id. at 2:5-6. The court disagrees. In its ruling supporting the September 1, 2016 order, the state court found that the only cause of action pled against the Doe defendants, including the debtor as Doe 3, was a cause of action for common counts. The court determined that the court that entered the original judgment therefore had no jurisdiction to enter

a default judgment against the debtor on a theory of liability for breach of contract or for breach of contract damages.

The ruling underlying the September 1, 2016 order went further:

Defendant/Judgment Debtor Helmandi has established a defense to the common counts action in that the facts alleged in the complaint in light of the attached exhibits do not support entry of judgment against him for common counts that are premised upon an allegation that the work, labor, services, and materials were rendered at the special instance and request of defendant Helmandi for transit advertising.

Tentative ruling, attached to and adopted in the state court's Sept. 1, 2016 order, in turn, attached to the debtors' objection. In short, the September 1, 2016 order was based on a ruling that determined the original judgment to be invalid as in excess of jurisdiction and determined the debtor had established a defense to the cause of action pled against him. But for this court's conclusion as to Mr. Hyppa's time to file a notice of appeal (see below), the court would conclude the September 1, 2016 order had the effect of vacating the renewal of the original judgment and invalidating that judgment. Thus, the claim would be unenforceable against the debtors and the debtors' property under applicable law, and the court would sustain the objection pursuant to § 502(a)(1).

Mr. Hyppa cites Green v. Zissis, 5 Cal. App. 4th 1219 (1992), which held that "[t]he court's order vacating the 'renewed' judgment had no effect on the original judgment. The original judgment remained valid, although lacking renewal it could not be enforced under section 683.020. Defendant's contention that the original judgment was thereby invalidated is wholly unmeritorious." 5 Cal. App. 4th at 1222. The Green court did not purport to make its holding applicable in all cases and the particular facts of that case make it readily distinguishable from this one. First, in Green, the renewal of the judgment was vacated because "the application for renewal had not been properly and timely filed." Id. at 1221. In the present case, in contrast, the state court vacated the renewal on the ground that the original judgment was in excess of the court's jurisdiction and because the debtor had established a defense on the merits. Second, in Green, despite the order vacating the renewal of the judgment, the plaintiff could still seek to enforce the original judgment because his ten-year period in which to do so had, due to the defendant's absence from the state, not yet expired. Mr. Hyppa does not suggest his ten-year period to enforce the original judgment has not expired.

Second, however, Mr. Hyppa contends his time to appeal from the September 1, 2016 order had not run by the time the debtors filed their bankruptcy petition, on October 6, 2016, and the automatic stay has prevented him from filing an appeal since then. He is correct. Although the order was entered on September 1, 2016, it was not served on Mr. Hyppa until September 28, 2016. Mr. Hyppa had 30 days from the latter date, or until October 28, 2016, in which to file a notice of appeal. Cal. Rule of Court 8.822(a)(1). The debtors' bankruptcy filing intervened on October 6, 2016. Inasmuch as the underlying lawsuit was an action against the debtor, the filing of a notice of appeal would be a violation of the automatic stay. Parker v. Bain (In re Parker), 68 F.3d 1131, 1138 (9th Cir. 1995); Wright v. Turner (In re Turner), 204 B.R. 988, 992-93 (9th Cir. BAP 1997); In re Ingeniero, 2007 Bankr. LEXIS 1836, \*2 (Bankr. N.D. Cal. 2007).<sup>2</sup>

The debtors cite ECC Construction, Inc. v. Oak Park Calabasas Homeowners Ass'n, 118 Cal. App. 4th 1031 (2004), as holding that the filing of a bankruptcy petition

does not toll the running of the 60-day period to file a notice of appeal.<sup>3</sup> The court did make a statement to that effect, citing an earlier California appellate court case (see id. at 1036-37), and also held the rule applied in that case. Id. However, the court went on to hold that, regardless of the running of the statutory period, § 108(c)(2) of the Bankruptcy Code preserved the right of a losing party to file a notice of appeal. Id. at 1039. Under § 108(c)(2), if applicable nonbankruptcy law fixes a period for commencing or continuing a civil action in a nonbankruptcy court on a claim against the debtor, and the period has not expired before the filing of the bankruptcy case, then the period does not expire until the later of (1) the end of the period; or (2) 30 days after notice of termination or expiration of the automatic stay. Thus, the ECC Construction held that § 108(c)(2) "would have acted to extend the time to file a notice of appeal until 30 days after notice of the lifting of the automatic stay, if that date were later than the end of the time period otherwise provided for filing a notice of appeal." Id.

Section 108(c)(2) applies in this case. Virtually the same facts were at issue in Spirtos v. Moreno (In re Spirtos), 221 F.3d 1079 (9th Cir. 2000). The ten-year period for the creditor to renew its judgment expired after the debtor's bankruptcy petition was filed. The debtor's wife, as a creditor and party-in-interest, filed an objection to another creditor's claim, contending the creditor's time to renew her judgment had run. The Ninth Circuit held: "On its face, section 108(c) appears to cover our situation. The California statute of duration is a nonbankruptcy law that applies to the Moreno judgment. The statute fixes a ten-year period during which Moreno had to keep the judgment from expiring by filing for renewal. Under section 108(c), then, the limitations period does not expire until 30 days after the end of the automatic stay." 221 F.3d at 1080-81.

The Ninth Circuit Bankruptcy Appellate Panel recently cited Spirtos as governing its decision in Good v. Daff (In re Swintek), 543 B.R. 303, 309 (9th Cir. BAP 2015), and held that § 108(c) tolls the time to renew an ORAP lien (a lien created by service of an order to appear for a debtor's examination). Id. at 311.

To hold otherwise not only would create a substantial inequity, but also would give the debtor the power to eliminate certain secured claims simply by filing for bankruptcy at the appropriate time and then allowing the limitation period to run while it remained under the protection of the automatic stay. Exactly this type of inequity congress [sic] sought to remedy by enacting § 108(c) [.]

Id. Thus, the Panel held the creditor's time to renew its lien would not expire until 30 days after notice of termination of the automatic stay. Id.

Pursuant to Spirtos, Swintek, and ECC Construction, the court concludes Mr. Hyppa will have 30 days from notice of termination of the automatic stay in which to file his notice of appeal. The appropriate state court is better suited than this court to determine the issues, and there is no reason to delay the process. This case was filed October 6, 2016 and the debtor has not confirmed a plan. The court has no reason to believe the debtor cannot obtain confirmation of a plan until this claim is determined, but in any event, there is no reason for delay. Accordingly, the court will lift the stay to allow Mr. Hyppa to file a notice of appeal, if he so chooses, and to allow the parties to conclude the appeal.<sup>4</sup> No enforcement action may be taken against the debtors, the debtors' property, or property of the estate without further order of this court.

The court will also continue the hearing on this objection to a date beyond the

30-day period imposed by § 108(c)(2) to determine whether Mr. Hyppa has filed a notice of appeal. If he has not, the court will sustain the debtors' objection. The court will hear the matter.

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- 1 The filing of the application itself renews the judgment (Cal. Code Civ. Proc. § 683.120(b)); immediately upon the filing of the application, the court clerk enters the renewal of the judgment in the court records. § 683.150(a).
- 2 Some courts within the Ninth Circuit have held that the renewal of a judgment is not a violation of the automatic stay. See Jacobs v. Brain Power Am., Inc., 2017 U.S. Dist. LEXIS 29599, \*5-6, n.20 (D. Nev. March 2, 2017); Employee Painters' Trust v. Ethan Enters., 2015 U.S. Dist. LEXIS 106234, \*15 (W.D. Wash. 2015). At least one other court has held just the opposite. In re Lobherr, 282 B.R. 912, 914-16 (Bankr. C.D. Cal. 2002). The Ninth Circuit Court of Appeals has not resolved the issue. See Spirtos v. Moreno (In re Spirtos), 221 F.3d 1079, 1081 (9th Cir. 2000); Employee Painters' Trust, 2015 U.S. Dist. LEXIS 106234, at \*15. However, the courts that have held there is no stay violation did so on the ground that the stay prohibits a creditor from creating, perfecting, or enforcing a lien, but not from renewing an existing judgment so as to simply maintain the status quo. See Jacobs, 2017 U.S. Dist. LEXIS 29599, at \*5.

The situation here is entirely different. This is not a case where the debtors' bankruptcy filing interrupted only the creditor's filing of an application for renewal of a judgment. Instead, the debtors' filing interrupted the creditor's attempt to appeal from an order vacating the creditor's earlier renewal of the judgment. The court has no hesitation in concluding that the automatic stay prohibits the filing of such an appeal.

- 3 ECC Construction refers to the 60-day period in a rule, since renumbered, that governs appeals from the superior courts, except appeals to the appellate divisions of the superior courts. The rule applicable here is Rule 8.822(a)(1), which governs appeals in limited civil cases; that is, cases in which the amount in controversy is \$25,000 or less. Appeals in such cases are to the appellate divisions of the superior courts. The appeal period is 30 days.
- 4 The court has the power under § 105(a) of the Code to lift the automatic stay sua sponte. Estate of Kempton v. Clark (In re Clark), 2014 Bankr. LEXIS 4633, \*25, 26 (9th Cir. BAP 2014); In re Bellucci, 119 B.R. 763, 779 (Bankr. E.D. Cal. 1990).



16. 17-20173-D-13 ANA FRENES  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
2-27-17 [17]

17. 16-27284-D-13 ROBERT VOLK  
JM-1

CONTINUED MOTION TO CONFIRM  
PLAN  
1-12-17 [28]

18. 16-24086-D-13 LORI GREEN  
PBG-1

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

19. 16-27693-D-13 CHARITY SEYMOUR  
DK-2

MOTION TO RECONSIDER FINAL  
ORDER ON OBJECTIONS TO  
CONFIRMATION OF PLAN  
2-28-17 [64]

**Final ruling:**

This is the debtor's motion for reconsideration of the court's order sustaining U.S. Bank's objection to confirmation of the debtor's proposed chapter 13 plan. (The motion also purports to seek reconsideration of the court's order "sustaining" the trustee's objection to confirmation. That objection, however, was overruled as moot, the court having already sustained the Bank's objection.) The motion will be denied because the case has been dismissed. The court notes that the debtor has appealed the order dismissing the case; however, she has not obtained a stay pending appeal. Thus, because the case has been dismissed, the objections to confirmation of the debtor's plan are now moot and the debtor's motion for reconsideration is moot. The motion will be denied as moot by minute order. No appearance is necessary.

20. 12-27696-D-13 JAMIE/ROBERT MACHADO  
HWW-4

MOTION TO MODIFY PLAN  
2-16-17 [89]

**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.

21. 15-25997-D-13 AL GREEN  
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
2-17-17 [58]

**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 sustain the trustee's objection to debtor's claim of exemptions. Moving party is to submit an appropriate order. No appearance is necessary.

22. 15-22103-D-13 MARK/LISA KAPOGIANNIS  
JCK-2

MOTION TO INCUR DEBT  
3-10-17 [23]

23. 14-31634-D-13 WILLARD/PATRICIA MAYNARD  
JCK-5

MOTION TO INCUR DEBT  
3-10-17 [72]

**Tentative ruling:**

This is the debtors' motion for authorization to incur debt. The motion was brought pursuant to LBR 9014-1(f)(2). Thus, the court will entertain opposition, if any, at the hearing, on condition that the moving parties have previously filed a corrected proof of service. The proof of service on file states that service was made "on the date stated below," and the date stated on the signature line is October 28, 2016.

The court will hear the matter.

24. 15-22253-D-13 SEAN DAVIS  
CJY-4

MOTION TO APPROVE LOAN  
MODIFICATION  
3-9-17 [48]