

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

April 5, 2016 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.	15-22818-D-13	SURINDER SINGH	MOTION TO CONFIRM PLAN
	PGM-2		2-23-16 [74]

2.	15-29725-D-13	TYESHA LINDSEY	MOTION TO CONFIRM PLAN
	TBK-2		2-24-16 [23]

3. 12-39530-D-13 PATRICIA MADRID MOTION TO MODIFY PLAN
JCK-2 2-29-16 [47]

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.

4. 12-39530-D-13 PATRICIA MADRID MOTION TO INCUR DEBT
JCK-3 3-3-16 [53]

5. 12-26340-D-13 HAROLD/LISA REYNOLDS MOTION TO MODIFY PLAN
JCK-2 2-26-16 [40]

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.

6. 14-23842-D-13 ANGELA WARREN-BASS MOTION TO MODIFY PLAN
JCK-7 2-26-16 [123]

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.

7. 14-23842-D-13 ANGELA WARREN-BASS MOTION TO AVOID LIEN OF DCFS
JCK-8 TRUST
2-26-16 [129]

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. No appearance is necessary.

8. 15-25943-D-13 MICHAEL/PHYLLIS MIRANDA MOTION FOR RELIEF FROM
BER-1 AUTOMATIC STAY
BANK OF STOCKTON VS. 2-24-16 [48]

Final ruling:

This matter is resolved without oral argument. This is Bank of Stockton's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtors are not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

9. 14-30347-D-13 ANTHONY DISOMMA MOTION TO MODIFY PLAN
JCK-5 2-22-16 [67]

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.

10. 16-21360-D-13 PARAM SAINI AND SATNAM MOTION TO VALUE COLLATERAL OF
CLH-1 KAUR WILSHIRE STATE BANK
3-8-16 [8]

11. 16-21360-D-13 PARAM SAINI AND SATNAM MOTION TO AVOID LIEN OF PAULINE
CLH-2 KAUR H. MCDONALD
3-8-16 [13]

Final ruling:

This is the debtors' motion to avoid a judicial lien allegedly held by Pauline H. McDonald, trustee of the D&P McDonald Trust Dated August 20, 1999 ("McDonald"). The motion will be denied because it is not accompanied by evidence establishing its factual allegations and demonstrating that the moving parties are entitled to the relief requested, as required by LBR 9014-1(d)(6).

"There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be ... a judicial lien. 11 U.S.C. § 522(f)(1)." Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added, internal quotation marks omitted). In this case, the debtors have not claimed as exempt any interest in the property as against which they seek to avoid the lien. (The motion states that the debtors' equity in the property was listed as exempt property in the debtors' Schedule of Property Claimed as Exempt, but that is not the case. The debtors' Schedule C does not include any claim of exemption in the property.) Thus, the debtors have not established that they are entitled to relief under § 522(f)(1)(A).

Further, 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)." Mohring, 142 B.R. at 391. Here, there is insufficient evidence of a judicial lien held by McDonald, as created by an abstract of judgment recorded in the county in which the debtors' property is located. The motion states that a copy of the recorded abstract of judgment has been filed as an exhibit, but that is not the case. There is no copy of the abstract attached to any of the moving papers or filed separately.

"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 the recorded abstract of judgment seems a small price to pay to avoid an otherwise valid and enforceable property interest.

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

12. 15-21576-D-13 JEREMY/KAREE HARRISON MOTION TO CONFIRM PLAN
SJS-4 2-16-16 [107]

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.

13. 15-27278-D-13 PAUL/SHARON WILLIAMS MOTION TO SELL AND/OR MOTION
MJH-3 FOR RELOCATOR FEE
2-29-16 [52]

14. 13-27185-D-13 KEVIN/DINA HVIKZA MOTION TO MODIFY PLAN
RLF-3 2-6-16 [47]

15. 15-29385-D-7 JOSE MURILLO MOTION TO CONFIRM PLAN
EYK-1 3-1-16 [52]

Final ruling:

This case was converted to a case under Chapter 7 on March 22, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

16. 14-21386-D-13 ROSIA/LINDA EALY
CJY-1

MOTION TO MODIFY PLAN
2-19-16 [69]

17. 16-20402-D-13 THOMAS HERNANDEZ
MDE-1

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
3-16-16 [12]

18. 16-21602-D-13 HECTOR MARTINEZ
TOG-1

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
3-16-16 [8]

19. 16-20410-D-13 CHRISTOPHER TILTON
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-14-16 [14]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

20. 16-20225-D-13 ESTELLE YANCEY
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE RUSSELL D.
GREER
3-14-16 [34]

Final ruling:

This case was dismissed on March 22, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

21. 15-23828-D-13 SHERYL HUDSON
WW-5

CONTINUED MOTION TO CONFIRM
PLAN
1-29-16 [124]

22. 14-21631-D-13 MICHAEL/NANNETTE FARIA
HWW-1

MOTION TO SUBSTITUTE ATTORNEY
3-22-16 [62]

23. 16-20231-D-13 DWIGHT MCKEE
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-14-16 [16]

24. 16-20346-D-13 NICHOLAS DIGIOVANNI
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-14-16 [17]

25. 15-27067-D-13 MARLENE DOUGLAS
15-2186 PGM-1
DOUGLAS V. S & S AUTO SALES

MOTION TO COMPEL
3-17-16 [17]

Tentative ruling:

This is the plaintiff's motion to compel discovery pursuant to Rule 37 for failure to cooperate in discovery and request for costs. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The motion will be denied for two reasons. First, by Scheduling Order filed December 17, 2015, the court fixed the date for close of discovery in this adversary proceeding as March 18, 2016. Pursuant to the order, "close of discovery" meant that all discovery "shall be completed" by that date. "Completed" meant, among other things, that "any disputes relative to discovery shall have been resolved by appropriate order, if necessary, and, where discovery has been ordered, compliance with the order has been achieved in all respects." As this motion was filed March 17, 2016, the day before discovery closed, the motion does not comply with the Scheduling Order, and will be denied.

Second, the moving party has failed to satisfy the meet and confer requirement of FRCP 37(a)(1). The Scheduling Order stated clearly that the court would expect the parties to comply with the standard set forth in In re Sanchez, 2008 WL 4155115, also found at 2008 Bankr. LEXIS 4239 (Bankr. E.D. Cal. 2008). In the present case, the evidence as to the meet and confer requirement consists of the following. First, the plaintiff's counsel's legal assistant testifies that he "personally packaged, stamped, and deposited a true and correct copy of Plaintiff's discovery requests on January 6, 2016." Second, the plaintiff's counsel testifies that on February 17, 2016, he spoke with the defendant's counsel by phone and allowed the defendant an extension to February 22, 2016 to respond to the plaintiff's discovery requests. The plaintiff's counsel adds that as of the date of his declaration (March 17, 2016), he has not received any responses. Finally, the plaintiff has filed a copy of an email from her counsel's legal assistant to the defendant's counsel, dated February 17, 2016, "follow[ing] up on [their] phone discussion yesterday regarding the discovery answers" and requesting an "update as soon as possible."

This evidence is a far cry from the sort of evidence necessary to satisfy the meet and confer requirement. See Sanchez, 2008 Bankr. LEXIS 4239, at *2-7 and cases cited therein. As a result, the motion will be denied. See Scheduling Order ["If the moving party has failed to satisfy the meet and confer requirement of FRCP 37(a)(1), the court will generally summarily deny the motion."].

The court will hear the matter.

