

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

May 2, 2017 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.	16-91000-D-13 BSH-1	MAURICE/VENISE SMALLEY	MOTION TO CONFIRM PLAN 3-21-17 [36]
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2.	16-91000-D-13 BSH-2	MAURICE/VENISE SMALLEY	MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A. 3-28-17 [41]
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Final ruling:

This is the debtors' motion to value collateral of JPMorgan Chase Bank, N.A. (the "Bank"). The moving parties served the Bank by certified mail to the attention of "Office [sic] of the Institution," but failed to also serve the attorneys who had filed a request for special notice three months earlier. The hearing will be continued to May 16, 2017 at 10: 00 a.m., the moving parties to file a notice of

continued hearing (pursuant to LBR 9014-1(f)(2) - no written opposition required) and serve it, together with the motion and supporting papers, on the attorneys who filed the request for special notice no later than May 2, 2017. The hearing will be continued by minute order. No appearance is necessary on May 2, 2017.

3. 16-91000-D-13 MAURICE/VENISE SMALLEY MOTION TO VALUE COLLATERAL OF
BSH-3 CHRYSLER CAPITAL
3-28-17 [46]

Final ruling:

This is the debtors' motion to value collateral of Chrysler Capital ("Chrysler"). The moving parties served Chrysler by certified mail to the attention of an "Officer of the Institution," whereas Chrysler is not an FDIC-insured institution and was required to be served by first-class mail, not certified mail. Compare Fed. R. Bankr. P. 7004(b)(3) and preamble to 7004(b) with Fed. R. Bankr. P. 7004(h). In addition, the notice of hearing gives the hearing date as May 2, 2017 in the caption but May 3, 2017 in the text. The hearing will be continued to May 16, 2017 at 10: 00 a.m., the moving parties to file a notice of continued hearing (pursuant to LBR 9014-1(f)(2) - no written opposition required) and serve it, together with the motion and supporting papers, in the manner required by Rule 7004(b)(3) no later than May 2, 2017. The hearing will be continued by minute order. No appearance is necessary on May 2, 2017.

4. 13-90202-D-13 ERIC/TINA HANSEN MOTION FOR COMPENSATION BY THE
CJY-5 LAW OFFICE OF FRIEND YOUNGER,
PC FOR CHRISTIAN J. YOUNGER,
DEBTORS' ATTORNEY(S)
3-20-17 [108]

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 by minute order. No appearance is necessary.

5. 17-90207-D-13 J FITZGERALD MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
FEDERAL NATIONAL MORTGAGE
ASSOCIATION VS. 3-31-17 [23]

Final ruling:

This case was dismissed on April 17, 2017. As a result the motion will be denied by minute order as moot. No appearance is necessary.

6. 16-90718-D-13 DANA JONES
TLC-3

MOTION TO CONFIRM PLAN
3-17-17 [58]

Tentative 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 Liberty Property Management, listed on the debtor's Schedule G as a party to a rental contract with the debtor. Thus, the debtor has failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). 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 to leases with the debtor. See also Fed. R. Bankr. P. 1007(a)(1).

As a result of this service defect, the motion will be denied by minute order. Alternatively, the court will continue the hearing and allow the debtor to cure this service defect. The court will hear the matter.

7. 17-90220-D-13 BRIAN HAYES
SSA-1
IRMA EDMONDS VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-6-17 [18]

8. 11-94222-D-13 SHELLEY SHAHEN
DCJ-6

CONTINUED MOTION TO MODIFY PLAN
7-5-16 [107]

Tentative ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The trustee has filed opposition and the debtor has filed a declaration and exhibits in reply. For the following reasons, the court intends to grant the motion.

The complexity in this matter results from the fact that the debtor and her husband jointly owed the same civil penalties to the IRS on account of unpaid employment taxes, but filed two separate chapter 13 cases. And because the husband filed about a year before the debtor filed her case, the IRS's proof of claim in the debtor's case includes civil penalties for the second and third quarters of 2010, which had not yet been assessed when the debtor's husband filed his case, and which were therefore not included in the IRS's claim filed in his case. It is clear, however, from a comparison of the IRS's claims in the two cases, together with the trustee's final report and account in the husband's case, that the civil penalties for all the quarters listed in the proof of claim filed in this case were paid through the plan in the husband's case except the penalties for the second and third quarters of 2010 .1 The amounts for those two quarters originally totaled \$7,801.49, against which the IRS applied \$672.16 from the debtors' tax refund for 2015, leaving a balance due of \$7,129.33. (In its ruling on the debtor's objection to the IRS's claim, also on this calendar, the court determines that to be the amount remaining due on the claim.)

Although he was also the trustee in the debtor's husband's case, and thus is aware of how much was paid to the IRS and on account of what tax periods, the trustee complains that "the IRS has not withdrawn or amended the claim [in this case] to show it has in fact been satisfied." Trustee's Opp., DN 113, at 1:22-23. This argument represents a misunderstanding of the claims process. Under § 502(b) of the Bankruptcy Code, claims are determined as of the date of the petition. Here, the debtor does not dispute that the amount of the IRS's claim, as of the petition date, was the amount shown on its proof of claim, \$51,900.23. The post-petition satisfaction of a claim, such as by way of payment by a third party - here, the debtor's husband, constitutes a treatment of the claim, not a ground for objecting to the claim. The grounds for objecting to a claim are set forth in § 502(b); satisfaction of the claim during the case, whether through the debtor's chapter 13 plan or her husband's plan in his own case, is not among them.² As such, there is no basis on which to require the IRS to withdraw or amend its claim.

The trustee's opposition to this motion, filed July 18, 2016,³ indicated he had \$3,758 on hand as of that date, and the debtor's proposed modified plan required the debtor to make a lump-sum payment of \$11,197 by August 25, 2016. See Fourth Modified Chapter 13 Plan, DN 110, ¶ 1.02. Assuming she did that, the trustee should have on hand sufficient funds to pay claims totaling \$13,459 as well as trustee compensation.⁴ That should be sufficient to pay the remaining amounts due the IRS, \$7,129.33, and the State Board of Equalization, \$4,178.73, a total of \$11,308.06. It is the court's understanding that all other claims to be paid under the plan have been paid; therefore, it appears the plan is feasible and the motion will be granted.

The court will hear the matter.

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- 1 The proof of claim in this case also includes civil penalties for the fourth quarter of 2010; however, the debtor and the IRS have addressed the issues concerning the remaining balance due on the IRS's claim without reference to that quarter. "Debtor's tax liabilities for civil penalties relating to the 2nd Quarter, 2010, and 3rd Quarter, 2010, tax periods remain outstanding." Joint Statement of Agreed Upon Facts, DN 139 ("Joint Statement"), ¶ 14. Thus, the court assumes the penalties for the fourth quarter of 2010 have been paid or are otherwise no longer due.
 - 2 To the extent there remained any doubt, the IRS has acknowledged in writing that the civil penalties for all the quarters listed in its proof of claim in this case were paid through the debtor's husband's plan except the second, third, and fourth quarters of 2010. See Joint Statement, at ¶¶ 2 and 5. And as indicated in footnote 1 above, it appears the fourth quarter of 2010 has been taken care of.
 - 3 The proposed modified plan and the debtor's motion to confirm it were filed July 5, 2016. The hearing has been continued a number of times while the debtor attempted to resolve her dispute with the IRS.
 - 4 $\$3,758 + \$11,197 = \$14,955 - \$1,496 \text{ (trustee compensation)} = \$13,459.$

Tentative ruling:

This is the debtor's objection to a \$3,403.84 portion of the priority claim of the Internal Revenue Service ("IRS"). The IRS filed opposition and the hearing was continued to require the parties to file a joint statement of agreed-upon facts and to permit them to file supplemental briefs, which they have done. For the following reasons, the objection will be overruled.

The parties agree that the lion's share of the priority claim was paid by the debtor's husband through his own chapter 13 plan. They also agree that civil penalties on account of failure to pay employment taxes remain due for the second and third quarters of 2010, in the total amount of \$7,129.33. The issue is whether the IRS was entitled to apply a tax refund due the debtor and her husband for 2015, \$3,403.84, to post-petition interest on the civil penalties paid through the debtor's husband's plan, or instead, should have applied the refund to the amounts remaining due for the second and third quarters of 2010, thus reducing that figure, \$7,129.33, to \$3,725.49.1 In short, the question is whether the IRS was entitled to post-petition interest on pre-petition priority tax claims paid through the debtor's husband's plan.

The debtor relies, first, on § 1322(a)(2) of the Code, which provides for the payment of priority claims in deferred cash payments, with no mention of post-petition interest. The debtor contends if Congress had intended priority claimants to be entitled to post-petition interest, it would have so stated, as when it provided for payment of the present value of secured claims, in § 1325(a)(5)(B)(ii). Second, the debtor cites the familiar principle that the provisions of a confirmed plan, such as, here, the debtor's husband's plan, bind the debtor and creditors. She claims that once her husband completed his plan payments and received a discharge, "there was no further obligation to pay the Service any sums for the 'claims entitled to priority under section 507' since they had been fully paid as required by the confirmed plan." Debtor's Memo., DN 141, at 3:4-6.

The problem with both arguments is that the Ninth Circuit has expressly held that taxing authorities are entitled to post-petition interest on nondischargeable debts the principal of which is paid through a bankruptcy plan. To be more precise, post-petition interest on nondischargeable claims is due and is also nondischargeable. The IRS cites Ward v. Board of Equalization (In re Artisan Woodworkers), 204 F.3d 888 (9th Cir. 2000), in which the court held that "post-petition interest on a nondischargeable tax debt under 11 U.S.C. § 523(a)(1)(A) is also nondischargeable." 204 F.3d at 889. Specifically, "post-petition interest is an 'integral part' of such a tax debt and therefore nondischargeable under 11 U.S.C. § 523(a)(1)(A)." Id.2

The decision covered appeals in two different cases - in one, the question was whether the State Board of Equalization was entitled to post-petition interest on nondischargeable taxes in a chapter 11 case; in the other, the question was whether the IRS was entitled to post-petition interest on nondischargeable taxes in a chapter 12 case. In both cases, the debtors had completed their plan payments and received their discharges and the taxing authorities had then sought to collect

post-petition interest. The court's holding was the same for both cases - post-petition interest is not dischargeable, and thus, is recoverable from the debtor personally. Artisan Woodworkers, 204 F.3d at 891-92. Under governing Ninth Circuit case law, therefore, the IRS was within its rights to apply the tax refund to post-petition interest on the nondischargeable civil penalties and the debtor's objection will be overruled.

The court will hear the matter.

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- 1 The actual amount of the tax refund was \$4,076. The debtor contends that amount was improperly applied to post-petition interest, and therefore, the \$7,129.33 remaining balance due should be reduced to \$3,053.33. However, the IRS contends it applied only \$3,403.84 of the tax refund to post-petition interest and the balance, \$672.16, to the civil penalties due for the second quarter of 2010. The IRS's figures yield the amount the parties agree remains due for that period, \$4,805.31, so the court will accept the IRS's figures. (The claim for that period was originally \$5,477.47, as acknowledged in the joint statement. Deducting the \$672.16 the IRS says it applied from the refund leaves \$4,805.31, which the debtor agrees is the amount remaining due for that period.)
 - 2 The debtor does not appear to dispute that civil penalties assessed on account of the failure to pay employment taxes are nondischargeable. See §§ 1328(a)(2) and 507(a)(8)(C).

10. 17-90027-D-13 RIGOBERTO MARTINEZ AND MARIA MAGANA DE MARTINEZ OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
3-28-17 [28]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

11. 16-91136-D-13 ANTONIO GOMES OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
3-27-17 [50]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, 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.

12. 17-90145-D-13 NICOLE MORADKHANIAN MOTION FOR COMPENSATION FOR
SSA-3 STEVE S. ALTMAN, CREDITOR'S
ATTORNEY
4-7-17 [43]
13. 16-90946-D-13 DIANE HATTON MOTION TO CONFIRM PLAN
DCJ-3 3-20-17 [43]
14. 16-91153-D-13 RICARDO MARTINEZ AND EVA MOTION TO CONFIRM PLAN
MSN-2 HERNANDEZ 3-6-17 [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 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. 16-90362-D-13 KRISTOPHER/JULIE NABORS MOTION TO CONFIRM PLAN
BSH-4 3-17-17 [83]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because, except for a couple of common creditors, the mailing list attached to the proof of service does not include any of the creditors filing claims in this case or any of the creditors listed on the debtors' schedules. It is clear the mailing matrix is from a different case.

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

16. 16-90868-D-13 LISA COOPER
BSH-6

MOTION TO CONFIRM PLAN
3-14-17 [146]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because, except for a couple of common creditors, the mailing list attached to the proof of service does not include any of the creditors filing claims in this case or any of the creditors listed on the debtor's schedules. It is clear the mailing matrix is from a different case.

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

17. 17-90069-D-13 PAMELA MCCOLLOCH
WJS-1
THE CRABTREE 1999 REVOCABLE
TRUST VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
3-20-17 [20]

Final ruling:

The hearing on this motion is continued by stipulation of the parties to June 13, 2017 at 10:00 a.m. No appearance is necessary.

18. 16-90571-D-13 BYRON/KIMBLY ARNOLD
JHW-1
AMERICREDIT FINANCIAL
SERVICES, INC. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-3-17 [24]

Final ruling:

This matter is resolved without oral argument. This is Americredit Financial Services, Inc.'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.

19. 17-90274-D-13 AVELICIA SANCHEZ

MOTION FOR TEMPORARY WAIVER OF
THE CREDIT COUNSELING
REQUIREMENT
4-5-17 [8]

Final ruling:

This case was dismissed on April 17, 2017. As a result the motion will be denied by minute order as moot. No appearance is necessary.

20. 17-90186-D-13 FRANCISCO PEREZ
BSH-2

MOTION TO VALUE COLLATERAL OF
TOYOTA FINANCIAL
3-28-17 [19]

Final ruling:

This is the debtor's motion to value the collateral of Toyota Financial ("Toyota"). The motion will be denied for the following reasons: (1) the moving party served Toyota by certified mail whereas service on a corporation such as Toyota, that is not an FDIC-insured institution, must be by first-class mail (compare Fed. R. Bankr. P. 7004(b)(3) and preamble to 7004(b) with Fed. R. Bankr. P. 7004(h)); and (2) the motion bears DC No. BSH-2, whereas the rest of documents, including the proof of service, bear DC No. BSH-3.

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

21. 17-90186-D-13 FRANCISCO PEREZ
BSH-2

MOTION TO VALUE COLLATERAL OF
ALLY FINANCIAL
3-28-17 [14]

Final ruling:

This is the debtor's motion to value the collateral of Ally Financial ("Ally"). The motion will be denied for the following reasons: (1) the moving party served Ally by certified mail whereas service on a corporation such as Ally, that is not an FDIC-insured institution, must be by first-class mail (compare Fed. R. Bankr. P. 7004(b)(3) and preamble to 7004(b) with Fed. R. Bankr. P. 7004(h)); and (2) the notice of hearing bears DC No. BSH-1 and an amended notice of hearing bears DC No. BSH-3, whereas the rest of documents, including the proof of service, bear DC No. BSH-2.

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

22. 16-90388-D-13 CRISTINA ZAMUDIO
CAS-5

MOTION TO CONFIRM PLAN
3-15-17 [86]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the proof of service evidences service of the plan but not the motion, notice of hearing, or supporting declarations.

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

23. 14-91593-D-13 PAUL/RUTH CARROLL
MSN-2

MOTION TO MODIFY PLAN
3-24-17 [52]

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.

24. 16-91097-D-13 MERCEDES HOLLOWAY
DCJ-2

MOTION TO CONFIRM PLAN
3-20-17 [46]

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 Macy's Department Stores National Bank, listed on her Schedule E/F as holding a claim for \$4,000. As a result, the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b).

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

25. 16-90007-D-13 MARK/KATARINA GONZALES
JCK-1

MOTION TO INCUR DEBT
4-18-17 [20]

Tentative ruling:

This is the debtors' motion to incur debt. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing, subject to the following. The proof of service names the declarant in the opening sentence and the declaration under oath at the end as Janice Kyle (and the name typed below the signature line is Janice Kyle), whereas the declaration is signed by Janice Bennet. If the Janice Kyle is now known as Janice Bennet, that needs to be clarified by naming Janice Bennet throughout the proof of service. If the moving parties have filed an amended proof of service by the time of the hearing, the court will hear the matter. If an amended proof of service has not been filed, the court intends to deny the motion.

The court will hear the matter.

26. 17-90126-D-13 MATTHEW/CELESTE JAMISON
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-10-17 [24]

Final ruling:

This case was dismissed on April 18, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

27. 16-90138-D-13 SANDRA MUNOZ
MSK-5
CHAMPION MORTGAGE COMPANY
VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
3-16-17 [38]

Final ruling:

This matter is resolved without oral argument. This is Champion Mortgage Company'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 there is no equity in the subject property and the creditor's interest in the 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.

28. 16-90138-D-13 SANDRA MUNOZ CONTINUED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
3-30-17 [47]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause. No appearance is necessary.

29. 17-90069-D-13 PAMELA MCCOLLOCH CONTINUED OBJECTION TO
WJS-2 CONFIRMATION OF PLAN BY JOAN M.
AROE
3-28-17 [28]

30. 13-91078-D-13 DAVID/JENNIFER VOLFI CONTINUED MOTION TO MODIFY PLAN
BSH-7 2-27-17 [85]