

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

May 8, 2018 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.	18-20701-D-13	ERICA ORTEGA	OBJECTION TO DEBTOR'S CLAIM OF
	RDG-2		EXEMPTIONS
			4-2-18 [33]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The objection was brought on the ground the debtor had failed to file a spousal waiver to permit her to claim the exemptions provided by Cal. Code Civ. Proc. § 703.140(b). On April 23, 2018, the debtor filed a spousal waiver that appears to be signed by herself and her spouse. As a result of the filing of the spousal waiver, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

2. 17-27504-D-13 LILLIAN GLEASON  
RLG-4

MOTION TO VALUE COLLATERAL OF  
HSBC MORTGAGE SERVICES AND/OR  
MOTION TO AVOID LIEN OF HSBC  
MORTGAGE SERVICES  
3-27-18 [49]

**Tentative ruling:**

**This is the debtor's motion to value collateral of HSBC Mortgage Services. The motion will be denied by minute order because there is no proof of service on file. Alternatively, the court will continue the hearing to allow moving party to correct this deficiency.**

3. 18-20004-D-13 JALON/MIRANDA HARRISON  
JCK-1

MOTION TO CONFIRM PLAN  
3-22-18 [18]

4. 18-20805-D-13 GRANT BROOKS  
JCK-2

MOTION TO CONFIRM PLAN  
3-23-18 [23]

5. 18-20423-D-13 VINITA ZINZUWADIA

MOTION TO CONFIRM PLAN  
3-12-18 [23]

**Final ruling:**

**This case was dismissed on March 28, 2018. As a result the motion will be denied by minute order as moot. No appearance is necessary.**

6. 18-20423-D-13 VINITA ZINZUWADIA OBJECTION TO DEBTOR'S CLAIM OF  
RDG-2 EXEMPTIONS  
3-21-18 [39]

**Final ruling:**

**This case was dismissed on March 28, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.**

7. 18-20932-D-13 RICHARD SANDOVAL OBJECTION TO CONFIRMATION OF  
NLL-1 PLAN BY LAKEVIEW LOAN  
SERVICING, LLC  
3-23-18 [15]

8. 17-25544-D-13 MANUEL/LIZA SABIO OBJECTION TO CLAIM OF  
JCK-4 AMERICREDIT FINANCIAL SERVICES,  
INC., CLAIM NUMBER 3  
3-22-18 [44]

**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 objection to claim of Americredit Financial Services, Inc., Claim No. 3 is supported by the record. As such the court will sustain the objection. Moving party is to submit an appropriate order. No appearance is necessary.**

9. 17-27444-D-13 LARRY SWANSON MOTION TO CONFIRM PLAN  
MJH-1 3-22-18 [46]

10. 17-21547-D-13 DAVID JARRETT  
EAT-1  
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-10-18 [61]

11. 17-27452-D-13 VIRGINIA URBAN  
RK-1

MOTION TO CONFIRM PLAN  
3-21-18 [32]

12. 18-21260-D-13 SHARON ADAMS-KENDRICK  
PGM-1

MOTION TO VALUE COLLATERAL OF  
TOYOTA FINANCIAL SERVICES  
4-5-18 [15]

13. 18-21972-D-13 THOMAS OGLE  
MJH-1

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
4-3-18 [8]

**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. 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.

14. 17-23581-D-13 EDGARDO HIRAM MORALES MOTION TO MODIFY PLAN  
TBK-6 3-30-18 [69]

**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. 17-25986-D-13 BEVERLY LUCIO MOTION FOR RELIEF FROM  
EAT-1 AUTOMATIC STAY  
WELLS FARGO BANK, N.A. VS. 4-2-18 [30]

**DEBTOR DISMISSED: 09/26/2017**

16. 16-26988-D-13 ROMEO/NOELETTE GONZALES MOTION FOR COMPENSATION FOR  
ALF-3 ASHLEY R. AMERIO, DEBTORS'  
ATTORNEY  
4-5-18 [47]

**Tentative ruling:**

This is the application of the debtor's counsel ("Counsel") for an additional award of attorney's fees. The trustee has filed opposition. For the following reasons, the motion will be denied.

Counsel estimated in her Rule 2016(b) statement, the statement of Rights and Responsibilities, and the debtors' original and amended chapter 13 plans that her fees for the case would total \$4,000 and she was paid that amount prior to the filing of the case. This is a non-business case; thus, under the court's local rules, that was the maximum amount Counsel was permitted to charge as an initial fee on a "no-look" basis. For the first 15 months, the case was truly a garden-variety chapter 13 case. No one filed an objection to confirmation or objection to exemptions, and no motions to value, motions to avoid liens, or objections to claims were needed. Then, in the fall of 2017, the debtors went into default on their plan payments and Counsel prepared and filed a motion to modify the plan, which was unopposed and was granted.

Three weeks after filing the motion to modify, the debtors filed a motion to use cash collateral, ostensibly to permit them to use car insurance proceeds to pay off the lienholder on the vehicle involved in the accident and to use the remainder of the proceeds to repair the vehicle. The court denied the motion as unnecessary,

since the debtors were not proposing to use any creditor's cash collateral for any other creditor or for the debtors' own purposes. That is, once the creditor having an interest in the insurance proceeds was paid off from those proceeds, the remaining proceeds were no longer collateral of that creditor or any other creditor; therefore, there was no need for court approval to use cash collateral. The trustee objects to that portion of Counsel's request which is for fees associated with that motion. The court agrees with the trustee. The motion was unnecessary. Counsel offered no cogent argument against that conclusion at the hearing and there is no reason the debtors should have to pay for the motion.

The court is also troubled by the charges for the motion to modify the plan because Counsel seems to assume that any work done post-confirmation entitles her to an additional fee, an assumption that is contrary to the local rules and contrary to the provisions the debtors agreed to in the Rights and Responsibilities. The local rule provides:

If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most post-confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation.

LBR 2016-1(c)(3). And those are the terms the debtors agreed to in the Rights and Responsibilities, albeit without the detail about the types of post-confirmation services that would generally be included in the initial fee.

As indicated, the debtors' original plan was confirmed without a hitch and Counsel had virtually no work to do after the filing of the case and before confirmation of the plan other than attending the meeting of creditors. Yet the time sheets filed with this motion list "all work" during that period as "N/A"; that is, the services are not broken down by description, staff members performing them, amount of time required, or fees incurred if charged on an hourly basis. Thus, the court has no way of determining whether the original \$4,000 fee was "sufficient to fully and fairly compensate counsel for the legal services rendered" or whether the post-confirmation services were substantial and unanticipated, and therefore, no way to determine whether additional fees are warranted.

Apparently in an attempt to demonstrate that the additional fees are reasonable, Counsel states in the motion that the total hours spent post-confirmation was 10.25 hours, but of that number, Counsel is seeking fees for only 6.6 hours. However, the hours listed in the summary total only 9.25, not 10.25, and of the 9.25, 3.3 hours were for services of Counsel's paralegal and legal assistant which were secretarial or clerical in nature, and therefore, properly listed on the summary as "No Charge per AA." See Sousa v. Miguel, 32 F.3d 1370, 1374 (9th Cir. 1994). The remaining hours - those billed by the attorneys - totaled 5.95, not 6.6. Thus, the total that might be awarded, if the court could determine that the original \$4,000 was not full and fair compensation, would be \$2,082.50, and Counsel has done the debtors no favor in claiming the total number of hours was 10.25 but she is only charging for 6.6.

A second problem is that the figures in the summary portion of Counsel's time sheets (DN 50, p. 3 of Ex. A) which are not shown as "No charge per AA" total \$2,082.50, not the \$2,310 requested. Third, all four of Counsel's attorneys bill at the same rate, \$350 per hour, whereas they were admitted to the bar in 2004, 2008, 2010, and 2015, respectively. In fact, the majority of the time billed, 4.65 hours, was billed by the attorney admitted in 2015. Counsel has submitted no evidence to support the conclusion that the \$350 rate is reasonable for any of its attorneys, especially the attorney admitted in 2015.

For the reasons stated, the court intends to deny the motion. The court will hear the matter.

17. 17-21796-D-13 ARMANDO COVARRUBIAS MOTION TO MODIFY PLAN  
TOG-3 3-21-18 [68]

**Final ruling:**

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

18. 18-21398-D-13 ROBERTO MIRASOL MOTION FOR RELIEF FROM  
DWE-1 AUTOMATIC STAY  
WELLS FARGO BANK, N.A. VS. 3-28-18 [11]

**DEBTOR DISMISSED: 03/30/2018**

19. 15-24726-D-13 JOSE DIAZ MOTION TO AVOID LIEN OF LOBEL  
CLH-2 FINANCIAL CORPORATION  
4-19-18 [41]

20.	18-20932-D-13 RDG-1	RICHARD SANDOVAL	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 4-16-18 [19]
21.	18-21040-D-13 RDG-1	RAYFORD GRIFFIN	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 4-16-18 [15]
22.	18-20855-D-13 RDG-2	WALTER/SHIRLEY SAUNDERS	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 4-16-18 [35]
23.	18-20855-D-13 AP-1	WALTER/SHIRLEY SAUNDERS	OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A. 4-17-18 [41]



24. 18-21171-D-13 EVERETT MARSHALL AND OBJECTION TO CONFIRMATION OF  
RDG-2 LYNETTE HASAN-MARSHALL PLAN BY RUSSELL D. GREER  
4-16-18 [40]
25. 18-20881-D-13 ANSEL CLIATT OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
4-16-18 [28]