

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

May 9, 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.	17-20700-D-13	TERRY ESSARY	OBJECTION TO DEBTOR'S CLAIM OF
	RDG-3		EXEMPTIONS
			3-27-17 [15]

Final ruling:

This case was dismissed on April 26, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

2.	17-21803-D-13	WILLIAM/MAGDALENA MERCER	MOTION TO VALUE COLLATERAL OF
	JCK-1		EXETER FINANCE CORPORATION
			3-31-17 [14]

Final ruling:

This is the debtors' motion to value collateral of Exeter Finance Corporation ("Exeter"). The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, although the moving parties served Exeter through its registered agent for service of process, they failed to also serve it through the entity that had requested special notice in this case over a week earlier (DN 8). Although service on that entity was not technically required by Fed. R. Bankr. P.

7004(b)(3), parties who file requests for special notice generally do so to ensure they are kept apprised of activity in the case, including, presumably, activity relating to them. As such, in order to ensure Exeter is fully apprised of the motion, the court will continue the hearing to May 23, 2017 at 10:00 a.m., the moving parties to file a notice of continued hearing and serve it, together with the motion and related documents, pursuant to the request for special notice, DN 8. The hearing will be continued by minute order. No appearance is necessary on May 9, 2017.

3. 17-20211-D-13 ROBERT/CYNTHIA RANGEL MOTION TO CONFIRM PLAN  
JCK-2 3-14-17 [31]

**Final ruling:**

This is the debtors' motion to confirm a first amended chapter 13 plan. On April 17, 2017, the debtors filed a withdrawal of the motion and a second amended plan. The purported withdrawal was ineffective. Because opposition had been filed, the debtors did not have the right to unilaterally withdraw the motion. Fed. R. Civ. P. 41(a), incorporated herein by Fed. R. Bankr. P. 7041. The court deduces from the purported withdrawal, however, that the debtors do not wish to contest the trustee's opposition to the motion. As a result, the motion will be denied by minute order. No appearance is necessary.

4. 17-20912-D-13 MOHAMMED SHOOSHTARI OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
4-10-17 [31]

5. 17-20024-D-13 CARL CARMICHAEL MOTION TO CONFIRM PLAN  
GMW-4 3-24-17 [44]

6. 16-28125-D-13 IGNACIO BECERRA AND MARIA MOTION TO CONFIRM PLAN  
TOG-1 ALVARADO 3-17-17 [33]

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties served Kia Motor Finance, listed on their Schedule D as holding a secured claim for \$16,006, as follows: "Kia Motor Finance, P.O. Box , Dallas, TX 75265." In other words, the post office box number was missing. As a result, the moving parties 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 address the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

7. 16-25228-D-13 PATRICK WOLRIDGE MOTION TO CONFIRM PLAN  
EJV-3 3-27-17 [54]

**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.

8. 17-20933-D-13 MONICA HERRERA OBJECTION TO CONFIRMATION OF  
PLAN BY PROF-2013-S3 LEGAL  
TITLE TRUST IV  
4-11-17 [29]

9. 17-20933-D-13 MONICA HERRERA OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
4-10-17 [26]

10. 16-27542-D-13 RUBEN JIMENEZ AND AIDA MOTION TO CONFIRM PLAN  
TOG-2 CASTILLO 3-16-17 [38]

**Final ruling:**

The debtors have indicated they do not wish to contest the issues raised by the trustee in his opposition to this motion. Accordingly, the motion will be denied by minute order. No appearance is necessary.

11. 15-27146-D-13 DENNIS THURSTON MOTION TO MODIFY PLAN  
JCK-4 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.

12. 16-23647-D-13 GINA CRONIN MOTION TO CONFIRM PLAN  
DCJ-4 3-27-17 [85]

**Final ruling:**

This case was dismissed on April 26, 2017. As a result the motion will be denied by minute order as moot. No appearance is necessary.

13. 17-21363-D-13 LOUIS LUCERO MOTION TO VALUE COLLATERAL OF  
MC-1 CENTRAL STATE CREDIT UNION  
4-2-17 [15]

**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. 16-26469-D-13 LONEY/MARY TURPIN  
TAG-6

MOTION TO CONFIRM PLAN  
3-14-17 [84]

**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 failed to serve three of the creditors on their Schedule E/F at all and failed to serve AT&T Retirement Savings Plan, listed on their Schedule D, at all.

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

15. 16-23973-D-13 WAYNE FLORES  
HWW-5

MOTION FOR APPOINTMENT AS  
SUCCESSOR TO DECEASED DEBTOR  
AND/OR MOTION FOR EXEMPTION  
FROM FINANCIAL MANAGEMENT  
COURSE  
4-11-17 [97]

**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 for appointment as successor to deceased debtor and waiver of post-petition education requirement for entry of discharge (the "Motion") is supported by the record. As such the court will grant the Motion. Moving party is to submit an appropriate order. No appearance is necessary.

16. 17-20974-D-13 KAREEM SYKES  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
4-10-17 [20]

17. 17-21085-D-13 YANIRA HERNANDEZ  
RCO-1

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
3-10-17 [16]

**Final ruling:**

This is the objection of Wells Fargo Bank to confirmation of the debtor's proposed chapter 13 plan. As the court will sustain the trustee's objection to confirmation of the same plan, this objection will be overruled as moot by minute order. No appearance is necessary.

18. 17-21085-D-13 YANIRA HERNANDEZ  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
4-10-17 [21]

**Final ruling:**

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. On April 25, 2017, the debtor purported to withdraw the plan. The court views the purported withdrawal as akin to purporting to unilaterally withdraw a motion after opposition has been filed, which is not permitted. Fed. R. Civ. P. 41(a), incorporated herein by Fed. R. Bankr. P. 7041. The court deduces from the purported withdrawal, however, that the debtor does not wish to contest the trustee's objection. As a result, the objection will be sustained by minute order. No appearance is necessary.

19. 13-33386-D-13 WILMER/IRVINE JOHNSON  
JCK-7

MOTION TO MODIFY PLAN  
3-24-17 [98]

**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.

20. 17-22095-D-13 MARCO PALMA  
UST-1

MOTION TO DISMISS CASE  
4-3-17 [10]

21. 17-22396-D-13 CYNTHIA/PAUL MARSH  
HWW-1

MOTION TO EXTEND AUTOMATIC STAY  
4-11-17 [6]

22. 16-27397-D-13 YOLANDA BURGIN  
PGM-4

MOTION TO CONFIRM PLAN  
3-22-17 [73]

**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.

23. 16-28306-D-13 GABRIEL SALAZAR-PENA  
TOG-2

MOTION TO AVOID LIEN OF SEQUOIA  
CONCEPTS, INC.  
4-25-17 [41]

24. 17-22407-D-13 SERGIO ZAMORA  
LR-1

MOTION TO EXTEND AUTOMATIC STAY  
4-24-17 [10]

25. 17-21532-D-13 TIMOTHY BROOKS  
CLH-3

MOTION TO VALUE COLLATERAL OF  
FINANCIAL CENTER CREDIT UNION  
4-25-17 [26]

26. 17-21532-D-13 TIMOTHY BROOKS  
CLH-4

MOTION TO VALUE COLLATERAL OF  
FINANCIAL CENTER CREDIT UNION  
4-25-17 [30]

27. 16-25353-D-13 MURIAH KENDALL  
SL-2

MOTION TO VACATE  
4-20-17 [74]

**Tentative ruling:**

This is the debtor's motion to vacate the order dismissing this case, filed March 24, 2017. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

First, the motion was carelessly drafted. It twice indicates the debtor seeks an order vacating the conversion of the case, whereas the case has never been converted. Second, the moving party served only the trustee and the United States Trustee and failed to serve any creditors. Although there is no specific rule requiring service of a motion of this type on creditors, they have an interest in whether the dismissal order is vacated, and thus, they should have been served.<sup>1</sup>

Third, although the debtor requests relief under Fed. R. Civ. P. 60(b) and Fed. R. Bankr. P. 9024 on the ground of excusable neglect, the moving papers include no analysis as to whether the conduct that led to the dismissal of the case falls within the "excusable neglect" standard, as developed in the case law. The motion lays the blame on the debtor's counsel rather than the debtor, but it simply assumes that so long as the conduct that led to the order sought to be vacated was that of counsel rather than the party, excusable neglect applies, which is not the case. Further, the moving papers include inherently conflicting information and do not support a conclusion of excusable neglect.

The case was dismissed when the debtor failed to file a motion to confirm an amended plan within the time fixed by a conditional order. That order, in turn, had issued on the trustee's motion to dismiss for failure to confirm a plan. The present motion is inherently contradictory. First, it states: "Dismissal occurred through the neglect of counsel in not recognizing that the necessary tax returns were sent correctly to our office and waiting on filing a motion to confirm." Debtor's Motion, DN 74, at 1:15-19. The motion then cites Rule 60(b) and adds: "Here[,] undersigned was unaware that debtor sent the tax returns directly to the trustee. Nevertheless, a motion to confirm should have been filed in the event the tax returns were sent." *Id.* at 1:24-2:1. Thus, the debtor's counsel, who signed the motion, states first that the tax returns were sent to his office and then that they were sent directly to the trustee. The debtor's testimony is equally brief, although not inherently inconsistent: "I have filed for relief and to avoid my home from being foreclosed. I did my part and timely sent copies of my returns to my attorney to provide to the trustee. It is a surprise that the case is dismissed."



The excuse is not sufficient. This case was filed on August 15, 2016. On October 7, 2016, the trustee objected to the debtor's initial plan on the ground that the debtor had failed to provide copies of her 2015 tax returns. The objection was sustained at the hearing on November 1, 2016, at which an attorney appeared, apparently for the debtor.<sup>2</sup> The debtor filed a motion to confirm an amended plan on November 22, 2016 – that motion was denied on January 17, 2017 for service defects and because the plan provided for the secured claim of the Franchise Tax Board at less than the full amount of the claim whereas the debtor's motion to value the Board's collateral had been denied earlier.

When the debtor had not filed a further amended plan by February 14, 2017, the trustee filed a motion to dismiss the case. An attorney appeared at the hearing (again Mr. Kwun), on February 28, 2017, and advised the court the debtor had only recently filed several years worth of tax returns and they had been reluctant to file an amended plan until that had been accomplished. It was made clear to Mr. Kwun at the hearing that the debtor would be required to file an amended plan by March 10, 2017 and have it confirmed by May 9, 2017 or the case would be dismissed. The trustee's counsel requested that copies of the debtor's recently-filed tax returns be sent to the trustee. The proposed conditional order was served on the debtor and Mr. Lanphier on March 2, 2017. The order clearly stated the case could be dismissed on the trustee's declaration if the debtor failed to file an amended plan by March 10, 2017.

These facts lead to the following conclusions. First, the debtor was months late in submitting her 2015 tax returns to the trustee. They were due seven days before the date first set for the meeting of creditors, October 5, 2016. § 521(e)(2)(A). Second, the debtor offers no excuse for failing to file an amended plan in the month between the time her first motion to confirm was denied and the time the trustee filed his motion to dismiss. Third, the case was dismissed because the debtor failed to file an amended plan by the date fixed by the conditional order, an order of which both the debtor and her attorney were expressly made aware, not because the debtor had failed to provide copies of her tax returns (although it might have been dismissed for that failure – see § 521(e)(2)(B)). Although the debtor's attorney says the fault is his for failing to recognize the tax returns had finally been provided, he offers no excuse for waiting to file an amended plan until after the returns had been provided. In short, neither the debtor nor her attorney offers a sufficient excuse for failing to file an amended plan within the time constraints of the conditional order. The debtor has failed to demonstrate excusable neglect for that failure and the motion will be denied.

The court will hear the matter.

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- 1 And the proof of service itself is defective – it states service was made by mail but the addresses listed are email addresses.
  - 2 The debtor's attorney of record, Steele Lanphier, did not appear at the hearing. (He also had not appeared at the initial session of the meeting of creditors, although the debtor did.) Instead, a different attorney, Richard Kwun, who so far as the court can determine is not associated with Mr. Lanphier's firm, appeared "on behalf of Steele Lanphier."

28. 16-27284-D-13 ROBERT VOLK  
MRG-1  
LOANDEPOT.COM, LLC VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-20-17 [61]

29. 15-27287-D-13 GINA TOSCANO  
PGM-4

CONTINUED OBJECTION TO NOTICE  
OF MORTGAGE PAYMENT CHANGE  
2-8-17 [62]

**Tentative ruling:**

This is the debtor's objection to the Notice of Mortgage Payment Change filed by JPMorgan Chase Bank (the "Bank") on January 4, 2017. The Bank has filed opposition. For the following reasons, the objection will be overruled.

The debtor objects to the apparent increase in the escrow portion of the mortgage payment from \$49.77 to \$430.92, as shown on the January 4, 2017 Notice. At first glance, the increase raises eyebrows. However, an earlier Notice of Mortgage Payment Change filed by the Bank on November 10, 2015, two months after this case was filed and roughly 14 months before the January 4, 2017 Notice was filed, indicated the escrow portion of the payment would increase from \$49.77 to \$428.45 effective December 1, 2015, for a total mortgage payment of \$1,432.41. The debtor filed an amended plan on September 30, 2016 in which she listed the Bank as a Class 1 creditor with an ongoing payment of \$1,432.41, exactly the amount of the mortgage payment listed on the Bank's November 10, 2015 Notice of Mortgage Payment Change. The amended plan was confirmed by order filed December 9, 2016. It borders on the disingenuous for the debtor to now suggest the mortgage payment should not have been that amount but should instead have included only \$49.77 for the escrow portion rather than \$428.45. At a minimum, the argument disregards § 1327(a) of the Code.

As the Bank points out, given the increase in the escrow portion to \$428.45 effective December 1, 2015, the latest increase - the one shown on the January 4, 2017 Notice - is actually an increase of only \$2.47.<sup>1</sup> The Bank says the reason the January 4, 2017 Notice showed \$49.77 as the "current escrow payment" is that "that was the amount for which the Debtor's loan was contractually due at the time the escrow analysis was run . . . ." Bank's Opp., DN 74, at 3:23-25. Whatever the Bank's reason, however, there was no basis for the debtor, who had been aware of the increase from \$49.77 to \$428.45 from November of 2015 and who incorporated a mortgage payment including that amount in her chapter 13 plan, to deduce from the January 4, 2017 Notice that the true amount required for the escrow portion was still \$49.77. In fact, it appears from the various Escrow: Taxes and Insurance Statements filed by the Bank in this case (as attachments to its proof of claim and its two Notices of Mortgage Payment Change) that the escrow portion of the debtor's mortgage payment has historically been in excess of \$400 and has increased steadily: from \$405.61 in 2013 to \$414.04 in 2015, \$428.45 in 2016, and \$430.92 in 2017. It is also clear from those statements that the debtor's escrow account balance has for quite some time been significantly in the red. The Bank's proof of claim includes in the pre-petition arrearages (which the debtor included in full in her amended plan) an escrow shortage of \$10,562.62, presumably as of the petition date, September 16, 2015.

The debtor's analysis is inadequate to permit the court to conclude the \$430.92 figure shown on the January 4, 2017 Notice incorrect. The entire analysis is this:

No Basis Exists to Support the Alleged Increase of \$381.15, Nor The Resulting Plan Payment As the Escrow Analysis Starts in the Negative Post-Petition. Pursuant to the attached escrow analysis, the Creditor has stated different payment amounts depending on which Escrow Analysis is reviewed. In the Notice of Mortgage Payment Change filed November 11 [10], 2015 (Doc 25) the escrow surplus is \$292.96, while the 2017 statement states \$261.41, with deposits in April, May, June, and July of \$428.45, while the 2015 statement \$414.04. [Citation to November 10, 2015 Notice of Mortgage Payment Change.] This results in an over-accounting of the escrow needs, and which is included in the proof of claim (Claim #2), and this improper increase in the escrow, and resulting chapter 13 plan payment.

Debtor's Obj., DN 62, at 2:6-18.

The \$261.41 and \$292.96 figures do appear in the mortgage statements dated November 6, 2015 and November 17, 2016 (attached to the respective Notices of Mortgage Payment Change) as an "escrow surplus"; however, the evidentiary significance of those figures is far outweighed by the negative account balances of \$8,823.80 and \$7,075.93 shown on the same statements. (The latter are the final listings in a long list that includes a running balance; the former figures appear by themselves and there is no indication in the statements as to where the figures come from.) The "deposits in April, May, June, and July of \$428.45" the debtor refers to in her objection are not, apparently, actual deposits made by her; they are listed in the "estimated amounts" column, whereas the debtor's "actual amounts" paid in those months ranged from \$0 to \$1,053.86. It is clear, however, from the various statements that the escrow portion of the debtor's mortgage payment has been over \$400 per month since at least 2013 and that it has increased slightly but steadily since then. The debtor's analysis does not support the conclusion that the January 4, 2017 Notice of Mortgage Payment Change should be disregarded.

For the reasons stated, the objection will be overruled and the debtor's request for an award of attorney's fees will be denied. The court will hear the matter.

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1      \$430.92 - \$428.45 = \$2.47.

30.    17-22910-D-13      MURIAH KENDALL  
         SLE-1

MOTION TO EXTEND AUTOMATIC STAY  
O.S.T.  
4-29-17 [8]