

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

May 14, 2019 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.	18-90506-D-13	ROBIN HAMADE-GAMMON	CONTINUED MOTION TO CONFIRM
	BSH-4		PLAN
			2-5-19 [87]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The trustee has filed opposition based on a filed priority claim of the IRS that is not provided for in the plan. The hearing will be continued to May 28, 2019, at 10:00 a.m. to coincide with the hearing on the debtor's objection to the claim of the IRS. The hearing will be continued by minute order. No appearance is necessary on May 14, 2019.

2. 18-90924-D-13 MOSES/TONYA SMITH
RAS-1
U.S. BANK NATIONAL
ASSOCIATION VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
3-13-19 [16]

3. 14-91339-D-13 DEBORAH DIXON

MOTION TO SUBSTITUTE ATTORNEY
4-5-19 [24]

Tentative ruling:

On April 9, 2019, the debtor's attorney filed a document entitled Substitution of Attorney, which has been calendared as a motion to substitute attorney. By the substitution, which is signed by the debtor and her attorney, the debtor purports to substitute herself in the case in place of Sagaria Law, P.C.

The noticing of the hearing was incorrect and insufficient. The debtor's attorney initially signed and filed a Notice of Hearing Re: Substitution of Attorney and served it, together with the substitution, on the debtor, the chapter 13 trustee, and the Office of the U.S. Trustee. The notice of hearing purported to set the hearing for an incorrect date and time. An amended notice of hearing set the matter for this date, time, and place but it, like the original, was served only on the debtor, the trustee and the U.S. Trustee, whereas it should also have been served on all other parties who have appeared (LBR 2017-1(e)), which in the court's view, includes all parties-in-interest, including creditors.

As a result of this service defect, the court is inclined to deny the motion by minute order.

4. 17-90153-D-13 JASON UNDERWOOD
PSB-5

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BAINS LEGAL, PC
FOR PAULDEEP BAINS, DEBTOR'S
ATTORNEY(S)
4-4-19 [92]

5. 14-90461-D-13 JANIS WHITBY

MOTION TO SUBSTITUTE ATTORNEY
4-5-19 [78]

Tentative ruling:

On April 9, 2019, the debtor's attorney filed a document entitled Substitution of Attorney, which has been calendared as a motion to substitute attorney. By the substitution, which is signed by the debtor and her attorney, the debtor purports to substitute herself in the case in place of Sagaria Law, P.C.

The noticing of the hearing was incorrect and insufficient. The debtor's attorney initially signed and filed a Notice of Hearing Re: Substitution of Attorney and served it, together with the substitution, on the debtor, the chapter 13 trustee, and the Office of the U.S. Trustee. The notice of hearing purported to set the hearing for an incorrect date and time. An amended notice of hearing set the matter for this date, time, and place but it, like the original, was served only on the debtor, the trustee and the U.S. Trustee, whereas it should also have been served on all other parties who have appeared (LBR 2017-1(e)), which in the court's view, includes all parties-in-interest, including creditors.

As a result of this service defect, the court is inclined to deny the motion by minute order.

6. 18-90563-D-13 BRIAN/AMRITA MCINTYRE
BSH-3

MOTION TO CONFIRM PLAN
3-20-19 [61]

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. 17-90869-D-13 KAY PARKER

CONTINUED MOTION BY DUNCAN M.
NEFCY TO WITHDRAW AS ATTORNEY
3-8-19 [128]

8. 17-90869-D-13 KAY PARKER
18-9005
PARKER V. MID VALLEY
FINANCIAL, INC. ET AL

CONTINUED MOTION BY DUNCAN M.
NEFCY TO WITHDRAW AS ATTORNEY
3-8-19 [46]

9. 17-90869-D-13 KAY PARKER
18-9016
DEOL V. PARKER

CONTINUED MOTION BY MATTHEW
MELLEN, DUNCAN M. NEFCY TO
WITHDRAW AS ATTORNEY
3-8-19 [50]

**ADVERSARY PROCEEDING CLOSED:
12/19/2018**

10. 17-90869-D-13 KAY PARKER
19-9004
PARKER V. DEOL ET AL

CONTINUED MOTION BY DUNCAN M.
NEFCY TO WITHDRAW AS ATTORNEY
3-8-19 [23]

11. 19-90272-D-13 JOHN/TAMARA FERNANDEZ
NLL-1

MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY
4-5-19 [11]

12. 16-90373-D-13 SCOTT/APRYL HOUSTON

MOTION TO SUBSTITUTE ATTORNEY
4-5-19 [23]

Final ruling:

On April 9, 2019, the debtor's attorney filed a document entitled Substitution of Attorney, which has been calendared as a motion to substitute attorney. By the substitution, which is signed by the debtors and their attorney, the debtor purports to substitute themselves in the case in place of Sagaria Law, P.C.

The noticing of the hearing was incorrect and insufficient. The debtors' attorney initially signed and filed a Notice of Hearing Re: Substitution of Attorney and served it, together with the substitution, on the debtors, the chapter 13 trustee, and the Office of the U.S. Trustee. The notice of hearing purported to set the hearing for an incorrect date and time. An amended notice of hearing set the matter for this date, time, and place but it, like the original, was served only on the debtors, the trustee and the U.S. Trustee, whereas it should also have been served on all other parties who have appeared (LBR 2017-1(e)), which in the court's view, includes all parties-in-interest, including creditors.

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

13. 18-90876-D-13 LEONARDO/MELISSA JOSEF
PLG-5

CONTINUED MOTION TO CONFIRM
PLAN
1-25-19 [42]

14. 18-90876-D-13 LEONARDO/MELISSA JOSEF
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
1-7-19 [24]

15. 16-90578-D-13 YVETTE IMBERT

MOTION TO SUBSTITUTE ATTORNEY
4-5-19 [36]

Tentative ruling:

On April 9, 2019, the debtor's attorney filed a document entitled Substitution of Attorney, which has been calendared as a motion to substitute attorney. By the substitution, which is signed by the debtor and her attorney, the debtor purports to substitute herself in the case in place of Sagaria Law, P.C.

The noticing of the hearing was incorrect and insufficient. The debtor's attorney initially signed and filed a Notice of Hearing Re: Substitution of Attorney and served it, together with the substitution, on the debtor, the chapter 13 trustee, and the Office of the U.S. Trustee. The notice of hearing purported to set the hearing for an incorrect date and time. An amended notice of hearing set the matter for this date, time, and place but it, like the original, was served only on the debtor, the trustee and the U.S. Trustee, whereas it should also have been served on all other parties who have appeared (LBR 2017-1(e)), which in the court's view, includes all parties-in-interest, including creditors.

As a result of this service defect, the court is inclined to deny the motion by minute order.

16. 19-90086-D-13 CARL ALMQUIST
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
3-25-19 [19]

17. 16-90007-D-13 MARK/KATARINA GONZALES
JCK-2

CONTINUED MOTION TO MODIFY PLAN
3-25-19 [37]

18. 18-90953-D-13 JAY/BLESSING-ANGELICA MOTION TO DISMISS CASE
BSH-3 PATTERSON 4-30-19 [57]
19. 19-90157-D-13 PHYLLIS MURPHY OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
4-22-19 [16]
20. 17-90962-D-13 ANU SINGH CONTINUED MOTION TO MODIFY PLAN
MSN-1 3-8-19 [39]
21. 19-90272-D-13 JOHN/TAMARA FERNANDEZ MOTION TO IMPOSE AUTOMATIC STAY
BSH-1 4-30-19 [23]

Tentative ruling:

This is the debtors' motion for an order for the automatic stay to take effect as to all creditors. 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, although the debtors seek to impose the stay as to all creditors, the only creditor they served was Wells Fargo Bank. Thus, that is the only creditor against whom the stay would be imposed if the motion were granted.

However, the court will deny the motion for two reasons. First, it was not filed within 30 days from the date the case was commenced, as required by § 362(c)(4)(B) of the Code. (The case was commenced March 26, 2019; this motion was not filed until April 30, 2019.) Second, the presumption of abuse arises and the debtors have failed to rebut it by clear and convincing evidence, or indeed, by any evidence. The motion states only that "[t]here have been two cases pending by the Debtors in the past 12 months" (Mot., filed April 30, 2019, ¶ 2) and "[t]he later case was filed in good faith." *Id.*, ¶ 3. The only evidence in support of the motion is the declaration of the debtors' attorney, who testifies, "The reason the Debtors' prior case was dismissed was due to my failure to file the attorney's compensation statement. It was inadvertently omitted in the prior filing." Haddix Decl., filed April 30, 2019, at 1:27-28. The declaration thus addresses only one of the two prior cases.

The case the debtors' attorney refers to was Case No. 19-90163, filed in February of this year and dismissed in March. The case before that one was Case No. 16-90003, which the debtors filed on January 6, 2016. They obtained confirmation of a plan on June 16, 2016. The trustee thereafter filed notices of default on February 6 and November 2, 2017 and January 5 and September 4, 2018. The report attached to the last of these shows the debtors went into default as early as October of 2016, making a catch-up payment of \$6,385 in March of 2017 and then immediately going into default again. By the time the case was dismissed, in October of 2018, the debtors were in default by \$8,139.

Thus, the presumption of abuse under § 362(c)(4)(D)(i)(II) arises because the debtors failed to perform the terms of a confirmed plan. They have failed to submit any evidence to rebut the presumption; accordingly, the motion will be denied. The court will hear the matter.

22. 19-90175-D-13 RICARDO PEREZ
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-22-19 [18]

23. 19-90175-D-13 RICARDO PEREZ
CJO-1

OBJECTION TO CONFIRMATION OF
PLAN BY CALIBER HOME LOANS,
INC.
4-23-19 [21]

24.	19-90086-D-13 BSH-2	CARL ALMQUIST	CONTINUED MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION 4-16-19 [26]
25.	17-90087-D-13 BSH-4	KEITH YEAMAN	CONTINUED MOTION TO SELL OR TRANSFER ASSETS 3-21-19 [61]
26.	19-90189-D-13 RDG-1	SHEILA PRICE	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D GREER 4-22-19 [21]
27.	19-90193-D-13 RDG-1	JOSE/CLAUDIA ACEVES	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 4-22-19 [17]