

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

May 26, 2015 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.	14-32400-D-13	TINA JOHNSON	MOTION TO CONFIRM PLAN
	BSH-1		4-3-15 [40]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve T-Mobile and Dameron Hospital, listed on her Schedule F, as required by Fed. R. Bankr. P. 2002(b); and (2) the moving party failed to serve the U.S. Dept. of Education at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b).

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

2. 14-32400-D-13 TINA JOHNSON OBJECTION TO DEBTOR'S CLAIM OF  
RDG-3 EXEMPTIONS  
4-13-15 [49]

**Final ruling:**

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response has been filed. The objection to the debtor's claim of exemption is supported by the record. The court will sustain the trustee's objection to debtor's claim of exemption. Moving party is to submit an appropriate order. No appearance is necessary.

3. 15-20103-D-13 CHARANJIT SINGH MOTION TO CONFIRM PLAN  
4-3-15 [44]

**Final ruling:**

This is the debtor's motion to confirm a second amended chapter 13 plan. On May 8, 2015, the debtor filed a third amended plan and a motion to confirm it. As a result of the filing of the third amended plan, the present motion is moot. (The debtor also purported to withdraw the motion. However, the trustee had earlier filed opposition to the motion. Pursuant to Fed. R. Civ. P. 41(a)(1), incorporated herein by Fed. R. Bankr. P. 7041 and 9014(c), the debtor was not permitted to withdraw the motion once opposition had been filed.)

The motion will be denied as moot by minute order. No appearance is necessary.

4. 09-45104-D-13 ROSALIA ELLIS MOTION TO MODIFY PLAN  
HWW-5 4-21-15 [68]

**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.

5. 15-21807-D-13 ALBERT/MARY HAYNES OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
5-1-15 [23]

6. 15-21410-D-13 KENNETH/EMILIE BURTON CONTINUED MOTION TO DISMISS  
RDG-1 CASE  
4-6-15 [25]
7. 10-51519-D-13 SAMUEL/GLORIA COLON MOTION TO MODIFY PLAN  
JCK-15 4-16-15 [119]
8. 11-35228-D-13 WILLIAM CHAFFER AND MOTION TO MODIFY PLAN  
JCK-7 GAYLIN PETROWICH 4-22-15 [87]

**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.

9. 15-22530-D-13 JAMEESE GUESS-SMOOT MOTION TO DISMISS CASE  
UST-1 4-17-15 [16]

10. 14-26232-D-13 ADAM/SANDRA LEIGHTON MOTION TO CONFIRM PLAN  
BSH-7 4-9-15 [133]

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. For the third time in this case, the moving parties have moved to confirm a plan but failed to serve the Internal Revenue Service at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(c). Instead, each time, the moving parties have used the address that appears on the court's claims register, although that is not the address on the proof of claim. (The address on the proof of claim is the Roster address.) The moving parties have, in any event, repeatedly failed to utilize the IRS's Roster address, despite rulings denying their motions for that reason (among others).

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

11. 14-27835-D-13 JOHN/ROBIN IVY MOTION TO MODIFY PLAN  
JCK-2 4-16-15 [24]

12. 10-44139-D-13 CELIA LAWRENCE MOTION TO MODIFY PLAN  
HWW-1 4-21-15 [31]

**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. 14-31741-D-13 RUBEN VALLEJO MOTION TO CONFIRM PLAN  
PLC-1 4-6-15 [47]

**Final ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the motion states that the debtor seeks to confirm an amended plan, but there is no such plan on file; instead, the plan filed with the motion, although different from the debtor's original plan, has the same title as the original plan; (2) the moving party utilized an outdated version of the PACER matrix; as a result, the moving party failed to serve several

creditors who have filed claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); (3) the moving party failed to serve the Franchise Tax Board at its address on the Roster of Governmental Agencies, as required by LBR 2002-(b); and (4) the proof of service does not adequately evidence service, in that it does not list the documents served, and the parties served electronically are listed beneath the language referring to service by mail.

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

14. 15-21347-D-13 TIM HUYNH

MOTION TO EXTEND AUTOMATIC STAY  
3-18-15 [14]

**Tentative ruling:**

This is the debtor's motion to extend the automatic stay pursuant to § 362(c)(3) of the Bankruptcy Code. Pursuant to § 362(c)(3)(A), where a debtor has been a debtor in a case pending within the prior year that was dismissed other than under § 707(b), as with the debtor in this case, the automatic stay terminates on the 30th day after the filing of the later case. Pursuant to § 362(c)(3)(B), on motion of a party-in-interest, after notice and a hearing completed before the expiration of the 30-day period, the court may extend the stay in certain circumstances. The present case was filed February 23, 2015; the 30th day after that day was March 25, 2015. The present motion is not set to be heard until May 26, 2015. As a result, the hearing on the motion was not completed and cannot be completed within the 30-day period, and the court has no authority under § 362(c)(3) to extend the stay.

The debtor also cites § 105(a) of the Code as authority for his motion. That section provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The debtor does not articulate how extending the automatic stay where the debtor has not complied with § 362(c)(3) is necessary to carry out any provision of the Bankruptcy Code. The court is not free to use § 105(a) to create a new right where the matter is covered by other sections of the Code, such as, in this case, § 362(c)(3).

"[Section] 105(a) is not a 'roving commission to do equity.'" Willms v. Sanderson, 723 F.3d 1094, 1103 (9th Cir. 2013) (citation omitted). "A court's inherent power must not be used to create substantive rights that are not available under applicable law." Eskanos & Adler, P.C. v. Roman (In re Roman), 283 B.R. 1, 14 (9th Cir. BAP 2002), citing Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206 (1988) ("whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code."). As the Ninth Circuit has put it, permitting courts to utilize § 105 to create new substantive rights "would put us in the business of legislating." Walls v. Wells Fargo Bank, N.A., 276 F.3d 502, 507 (9th Cir. 2002). "[I]t is not up to us to read other remedies into the carefully articulated set of rights and remedies set out in the Bankruptcy Code. . . . [T]he 'provisions of this title' [in § 105] simply denote a set of remedies fixed by Congress. A court cannot legislate to add to them." Id.

Finally, the debtor cites In re Reed, 370 B.R. 414, 418 (Bankr. N.D. Ga. 2006) (although without identifying the court that issued the decision or the year it was

issued), for the proposition that a debtor who rebuts the presumption that a subsequent case was not filed in good faith, pursuant to § 362(c)(3), has also satisfied the elements for injunctive relief; that is, for imposition of the automatic stay as a form of injunctive relief. The debtor claims he has rebutted the presumption, and "therefore the Court can, and should, reimpose the automatic stay." Debtor's Motion, filed March 18, 2015, at 3:8. Although the Reed court did find that "the matters considered in issuing an injunction are effectively subsumed in the determination under Section 362(c)(3)(B)" (370 B.R. at 418), the court is unaware of Ninth Circuit law for this proposition. The court is unaware of any binding authority or logical argument for the notion that a debtor can circumvent the requirement that a hearing be held within the 30-day period simply by making the same case he would have made had the hearing been held within that period.

For the reasons stated, the motion will be denied. The court will hear the matter.

15.	15-21347-D-13	TIM HUYNH	OBJECTION TO DEBTOR'S CLAIM OF
	RDG-2		EXEMPTIONS
			4-17-15 [29]

**Final ruling:**

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response has been filed. The objection to the debtor's claim of exemption is supported by the record. The court will sustain the trustee's objection to debtor's claim of exemption. Moving party is to submit an appropriate order. No appearance is necessary.

16.	14-28148-D-13	CESAR/BETTY DEL ROSARIO	OBJECTION TO CLAIM OF SHABBIR A
	JCK-011		KHAN, CLAIM NUMBER 10
			4-3-15 [108]

17.	11-42356-D-13	JOSE/MARIA ESPARZA	MOTION TO CONFIRM PLAN
	MJH-3		4-9-15 [49]

**Final ruling:**

This matter is a duplicate of item no. 18. Matter removed from calendar.

18. 11-42356-D-13 JOSE/MARIA ESPARZA MOTION TO MODIFY PLAN  
MJH-3 4-9-15 [49]

**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.

19. 11-20958-D-13 RICHARD/CHRISTY FLORES MOTION TO VALUE COLLATERAL OF  
CJY-1 JPMORGAN CHASE BANK, N.A.  
4-22-15 [49]

**Final ruling:**

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of JPMorgan Chase Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. 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 set the amount of JPMorgan Chase Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

20. 12-30064-D-13 CAROLYN FREEL MOTION TO SELL  
PGM-3 4-15-15 [83]

21. 15-20967-D-13 BENJAMIN/WHITLEY FRENCH CONTINUED OBJECTION TO  
RDW-1 CONFIRMATION OF PLAN BY SAN  
MATEO CREDIT UNION  
4-7-15 [16]

22.	15-21983-D-13	JUAN/NADINE MORGA	OBJECTION TO CONFIRMATION OF
	RDG-1		PLAN BY RUSSELL D. GREER
			5-1-15 [16]

23.	13-27384-D-13	JOSEPHINE ARENAS-FIERRO	MOTION TO MODIFY PLAN
	RCP-7		4-28-15 [115]

**Final ruling:**

**This matter is a duplicate of item no. 24. Matter removed from calendar.**

24.	13-27384-D-13	JOSEPHINE ARENAS-FIERRO	MOTION TO MODIFY PLAN
	RCP-7		4-21-15 [110]

25.	14-28986-D-13	MARGARITA GUTIERREZ	CONTINUED MOTION TO CONFIRM
	PGM-1		PLAN
			1-23-15 [78]



26. 15-21791-D-13 LYNELLE SAYRE  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
5-1-15 [13]

27. 14-32392-D-13 FELICIDAD BANIQUED  
LGW-3

MOTION TO CONFIRM PLAN  
4-3-15 [42]

**Final ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the "attached service list" referred to in the proof of service is not attached; thus, the court cannot determine whether all creditors were served, as required by Fed. R. Bankr. P. 2002(b), or whether they were served at the required addresses; (2) the moving party filed (a) the motion and memorandum of points and authorities, and (b) the notice of hearing and proof of service, as single documents rather than separately, as required by the LBR 9004-1(a) and the court's Revised Guidelines for the Preparation of Documents, Form EDC 2-901; and (3) the motion states that the dividend to general unsecured creditors will be 2.77% but the plan itself includes a 0% dividend.

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

28. 14-26614-D-13 VALERIA LABORDE  
PGM-3

CONTINUED MOTION TO CONFIRM  
PLAN  
3-26-15 [94]

29. 10-27017-D-13 MARIO/LISETTE CARDENAS  
JDP-1

MOTION TO VALUE COLLATERAL OF  
REAL TIME RESOLUTIONS, INC.  
5-12-15 [62]

30. 15-22138-D-13 CARLOS/MELANIE LEYVA OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
5-4-15 [23]
31. 15-21854-D-13 CEFERINO/XIOMARA GONZALES OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
5-1-15 [15]
32. 15-21280-D-13 ERNESTO SANCHEZ AND DIANA CONTINUED OBJECTION TO  
JLS-1 CORTINAS CONFIRMATION OF PLAN BY CAM VII  
TRUST  
4-22-15 [19]

**Tentative ruling:**

This is the objection of secured creditor CAM VII Trust (the "Trust") to confirmation of the debtors' proposed chapter 13 plan. The debtors have filed a response. For the following reasons, the court intends to either sustain the objection or continue the hearing.

The Trust has filed a proof of claim for \$185,978.69, including pre-petition arrears of \$37,183.50. In contrast, the debtors' plan provides for an arrears claim of \$32,800. Because the plan does not provide for payment in full of the arrears claim, the plan is not feasible. On request of the debtors, the court will continue the hearing to permit them to file an objection to the claim.

The Trust also challenges the feasibility of the step-up in the plan payment proposed to begin in month 24 of the plan term. For the first 23 months, the debtors will pay \$1,952 per month and for the last 37 months, \$2,125 per month, an increase of \$173. The Trust is not satisfied with the debtors' explanation, complaining that "no analysis is provided as to the actual amounts that will become available and how debtors will be able to make the increased plan payments." The debtors have indicated on their Schedule I, however, that debtor Diana Cortinas' 401(k) loan will be paid off in 23 months. The amount she has been paying is \$177, which is almost identical to the amount of the step-up in the plan payment in month 24. No further explanation is necessary.

Finally, the Trust contends the plan has not been proposed in good faith because this is the third bankruptcy filing for debtor Diana Cortinas in the past year. Debtor Ernest Sanchez, who the Trust claims does not have an ownership interest in the real property and is not an obligor on the mortgage loan, was added as a debtor in the present case. The Trust suggests this was done solely to obtain the benefit of the automatic stay where, if Diana Cortinas had filed this case alone, the stay would not have gone into effect. Although not in the form of admissible evidence, the debtors have offered an explanation for the dismissal of the two prior cases, in which Ms. Cortinas was represented by a different attorney, and the court is not prepared to deny confirmation of the debtors' plan in this case based solely on the fact of Ms. Cortinas' two prior filings.

For the reasons stated, the objection will be sustained for lack of feasibility of the plan. In the alternative, the court will continue the hearing to permit the debtors to assess the Trust's arrears claim, as set forth in its proof of claim, and determine whether to object to it. The court will hear the matter.

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|-----|---------------|----------------------|---|
| 33. | 15-21983-D-13 | JUAN/NADINE MORGA    | OBJECTION TO CONFIRMATION OF<br>PLAN BY BBCN BANK |
|     | JAR-1         |                      | 5-6-15 [19]                                       |
|     |               |                      |   |
| 34. | 14-26992-D-13 | ERIC/MELISSA MUTHART | CONTINUED MOTION TO MODIFY PLAN                   |
|     | CLH-1         |                      | 3-31-15 [23]                                      |
|     |               |                      |   |
| 35. | 14-29093-D-13 | ROSARIO SUAREZ       | CONTINUED MOTION TO CONFIRM<br>PLAN               |
|     | EWG-1         |                      | 3-25-15 [49]                                      |

36. 10-27996-D-13 EDGAR/PAMELA LUCKIE MOTION TO VALUE COLLATERAL OF  
JDP-1 CITIBANK, N.A.  
5-12-15 [41]
37. 15-21799-D-13 MIGUEL CERPAS OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
5-4-15 [16]