

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Modesto, California

**May 28, 2019 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.	18-90805-D-13	JAMES DUNN, AND NORMA	MOTION TO CONFIRM PLAN
	DEF-4	DUNN	4-1-19 [47]

2.	18-90506-D-13	ROBIN HAMADE-GAMMON	OBJECTION TO CLAIM OF IRS,
	BSH-5		CLAIM NUMBER 3
			4-15-19 [109]

3. 18-90908-D-13 HIRAM KEMP  
DCJ-3

MOTION TO CONFIRM PLAN  
4-16-19 [45]

**Final ruling:**

This is the debtor's motion to confirm a second amended chapter 13 plan. The motion will be denied because the plan proposes to pay \$0 on the claim of the Franchise Tax Board, filed by the Board at \$17,778 secured, whereas the moving party has failed to file a motion to value the Board's collateral, as required by LBR 3015-1(i).

The debtor's motion to confirm a first amended plan was denied for the same reason and for certain service defects that have now been corrected. The debtor's counsel has a pattern in other cases of filing plans without filing the motions to value collateral called for by the plans. The court has pointed out the problem repeatedly in tentative and final rulings to no avail. If this practice continues, the court will consider issuing an order to show cause why the debtor's counsel should not be sanctioned in the form of an order prohibiting him from filing a plan in any case in this district which calls for payment of less than the full amount of any secured claim unless he simultaneously files any and all motions to value collateral called for by the plan. The motion will be denied by minute order. No appearance is necessary.

4. 18-90411-D-13 ROGER/STORMIE SCHUMACHER  
DEF-9

MOTION TO CONFIRM PLAN  
4-12-19 [140]

**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.

5. 19-90215-D-13 DAWN DURBIN  
CJO-1

OBJECTION TO CONFIRMATION OF  
PLAN BY ROUNDPOINT MORTGAGE  
SERVICING CORPORATION  
4-30-19 [18]

6. 19-90215-D-13 DAWN DURBIN  
RDG-1  
OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
4-29-19 [15]
7. 18-90416-D-13 JENNI/NICHOLAS DENT  
MLP-2  
MOTION TO CONFIRM PLAN  
4-9-19 [66]
8. 17-90818-D-13 LISA GARCIA  
RKW-3  
MOTION TO MODIFY PLAN  
3-29-19 [91]
9. 18-90923-D-13 ESTHER CORTEZ  
BSH-4  
MOTION TO CONFIRM PLAN  
4-15-19 [47]

**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.

10. 18-90929-D-13 BRENDA STREET MOTION TO CONFIRM PLAN  
BSH-1 3-27-19 [32]

**Final ruling:**

**This is the debtor's motion to confirm a first amended chapter 13 plan. On May 15, 2019, the debtor filed a second amended plan and a motion to confirm it. As a result of the filing of the second amended plan, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.**

11. 17-90554-D-13 JASPAL SINGH MOTION TO MODIFY PLAN  
TOG-8 4-23-19 [162]

12. 18-90457-D-13 MAHESH GANDHI CONTINUED AMENDED MOTION TO  
DCJ-3 CONFIRM PLAN  
3-19-19 [62]

13. 16-90362-D-13 KRISTOPHER/JULIE NABORS MOTION TO MODIFY PLAN  
MSN-1 3-29-19 [121]

14. 16-90362-D-13 KRISTOPHER/JULIE NABORS MOTION FOR COMPENSATION FOR  
MSN-2 MARK S. NELSON, DEBTORS'  
ATTORNEY  
3-29-19 [127]

**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. Moving party is to submit an appropriate order. No appearance is necessary.

15. 18-90666-D-13 SHANNON JENKINS MOTION TO CONFIRM PLAN  
BSH-2 3-19-19 [42]

**Final ruling:**

This is the debtor's motion to confirm a second amended chapter 13 plan. On May 15, 2019, 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 motion will be denied as moot by minute order. No appearance is necessary.

16. 17-90869-D-13 KAY PARKER MOTION FOR SUMMARY JUDGMENT,  
18-9005 DLE-2 MOTION FOR AN ORDER ABSTAINING  
PARKER V. MID VALLEY FROM HEARING AND/OR MOTION TO  
FINANCIAL, INC. ET AL DISMISS CASE  
4-22-19 [72]

**Final ruling:**

This hearing has been continued to June 11, 2019 at 10:00 a.m. by order filed May 14, 2019. No appearance is necessary on May 28, 2019.

17. 18-90772-D-13 LUIS/RAMONA LOPEZ MOTION TO CONFIRM PLAN  
WLG-1 4-16-19 [50]

**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.

18. 17-90385-D-13 TRACY MCNEAL COX AND MOTION TO CONFIRM TERMINATION  
DJD-1 BYRON COX OR ABSENCE OF STAY  
4-24-19 [50]

19. 19-90189-D-13 SHEILA PRICE OBJECTION TO DEBTOR'S CLAIM OF  
RDG-2 EXEMPTIONS  
4-22-19 [24]

**Final ruling:**

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response has been filed and the Trustee's objection to the debtor's claim of exemptions is supported by the record. The court will issue a minute order sustaining the trustee's objection to debtor's claim of exemptions. No appearance is necessary.

20. 18-90594-D-13 AMANDA SMITHCAMP MOTION TO MODIFY PLAN  
MB-2 4-17-19 [58]

21. 18-90506-D-13 ROBIN HAMADE-GAMMON CONTINUED MOTION TO CONFIRM  
BSH-4 PLAN  
2-5-19 [87]

Tentative ruling:

This is the debtor's motion to extend the automatic stay pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will hear from the trustee and creditors, if any, at the hearing. However, the court intends to deny the motion as unnecessary.

The debtor discusses three prior cases in her supporting declaration, and she assumes without analysis the most recent prior case falls within the parameters of § 362(c)(3). It does not. This new case was filed on May 3, 2019. The debtor's most recent prior case was dismissed on February 22, 2018, more than one year prior, but was not closed until May 8, 2018, which was within the one year prior. The debtor seems to assume that a case remains "pending," within the meaning of § 362(c)(3), after it has been dismissed and until it has been closed.

The court has found no case holding and no language suggesting that a new case filed more than one year after the prior case was dismissed but less than one year after it was closed is subject to § 362(c)(3).<sup>1</sup> The language of one case directly negates this possibility:

Section 362(c)(3), added by the BAPCPA, limits that protection [of the automatic stay] for a repeat filer who files a bankruptcy case within one year of dismissal of an earlier bankruptcy case, terminating the automatic stay on the thirtieth day after the filing of the later case. 11 U.S.C. § 362(c)(3)(A). Section 362(c)(4), also added by the BAPCPA, eliminates the protection altogether for a repeat filer who files a bankruptcy case within one year of dismissal of two or more earlier bankruptcy cases, providing that the automatic stay "shall not go into effect upon the filing of the later case." 11 U.S.C. § 362(c)(4)(A).

Vitalich v. Bank of N.Y. Mellon, 569 B.R. 502, 509 (N.D. Cal. 2016) (emphasis added). The cases the court has reviewed all refer to the date the prior case was dismissed, not the date it was closed. Further, § 362(c)(3)(C)(i)(II) and (III) both refer to the prior case having been dismissed, not closed, within the preceding one-year period.

Another judge in this district has cited the reasons for the dismissal of the prior case as one of the factors for consideration in determining good faith under § 362(c)(3) and (4). See In re Ramirez, 2015 Bankr. LEXIS 2901, \*4-5 (Bankr. E.D. Cal. 2015) (citation omitted). This makes sense because the debtor has a level of control, depending, of course, on his or her financial and other circumstances, over when a case is dismissed. But the debtor has no control whatever as to when the case is closed. That timing depends on the trustee's filing of his final report and the clerk's procedures for closing a case that was previously dismissed. It simply makes no sense to include, for purposes of § 362(c)(3), a prior case dismissed more than one year before the filing of the new case, but closed within the one-year period. As that is the situation with the only one of the debtor's prior cases that even arguably falls with the scope of § 362(c)(3), the motion is unnecessary.<sup>2</sup>

The court will hear the matter.

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Dismissing and closing a bankruptcy case are two distinct events. Dismissal allows creditors and debtors to get on with their non-bankruptcy business and resolve their disputes in appropriate fora. Among other things, dismissal generally ends the automatic stay and reverts property of the estate in the entity in which such property was vested immediately before the commencement of the case. . . . Closing a bankruptcy case is a separate matter. Typically, dismissal does not coincide with termination of all proceedings. For example, chapter 13 cases usually stay open after dismissal to deal with approval of the chapter 13 trustee's final report and discharge of the trustee and trustee's surety. Once all such administration is completed an order may issue closing the dismissed case.

In re Aheong, 276 B.R. 233, 239 (9th Cir. BAP 2002).

2 To the extent the debtor wants a comfort order granting the motion, the court will follow this advice from its colleague: "I do not think it appropriate to enter orders, particularly those impacting all creditors and parties in interest, which needlessly generate possible confusion." In re Porter, 2009 Bankr. LEXIS 1914, \*3 (Bankr. W.D. Wash. 2009). This ruling should suffice for the debtor's purposes.

23. 18-90644-D-13 CARRIE FLORES  
JBA-1

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF GALE, ANGELO,  
JOHNSON, & PRUETT, P.C. FOR JOE  
ANGELO, DEBTOR'S ATTORNEY(S)  
5-13-19 [43]

Tentative ruling:

This is the application of Joe Angelo to have unearned and unpaid attorney's fees due to Sagaria Law, P.C. under the debtor's confirmed plan paid instead to his current firm, Gale, Angelo, Johnson, & Pruett, P.C. The application will be denied for the following reasons: (1) the moving party gave only 15 days' notice of the hearing, rather than 21 days', as required by Fed. R. Bankr. P. 2002(a)(6); and (2) the moving party served only the chapter 13 trustee and the Office of the U.S. Trustee, and failed to serve the debtor or the creditors, as required by the same rule.

As a result of these service and notice defects, the motion will be denied by minute order. The court will hear the matter.



24. 17-90564-D-13 DANIEL/GERARDEE DONNAN STATUS CONFERENCE RE: OBJECTION  
JAD-4 TO NOTICE OF POSTPETITION  
MORTGAGE FEES, EXPENSES, AND  
CHARGES  
2-16-18 [58]
25. 19-90193-D-13 JOSE/CLAUDIA ACEVES CONTINUED OBJECTION TO  
RDG-1 CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
4-22-19 [17]