

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

June 6, 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.	17-23005-D-13	ERIC ARMSTRONG	MOTION TO VALUE COLLATERAL OF
	SNM-1		FRANCHISE TAX BOARD
			5-8-17 [9]

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.

2. 17-23005-D-13 ERIC ARMSTRONG  
SNM-2

MOTION TO VALUE COLLATERAL OF  
INTERNAL REVENUE SERVICE  
5-8-17 [14]

**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.

3. 14-20409-D-13 MICHAEL NGUYEN AND LISA  
JCK-7 LIEN

MOTION TO MODIFY PLAN  
4-28-17 [74]

**Final ruling:**

The relief requested in the motion is supported by the record, the trustee having withdrawn his opposition, and no other 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.

4. 17-22710-D-13 GRACE KLISURA  
LHL-1  
WILMINGTON TRUST, N.A. VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-5-17 [9]

**Final ruling:**

This case was dismissed on May 12, 2017. As a result the motion will be denied by minute order as moot. No appearance is necessary.

5. 17-20211-D-13 ROBERT/CYNTHIA RANGEL  
JCK-3

MOTION TO CONFIRM PLAN  
4-18-17 [43]

**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.

**Tentative ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The trustee has filed opposition and the debtor has filed a reply. For the following reasons, the motion will be denied.

The trustee objected to confirmation of the debtor's original plan on two grounds: (1) that the debtor's Schedule J listed \$1,360 in childcare and children's education costs, whereas the debtor testified at the meeting of creditors the total expense is actually only \$400 - \$200 in day care for the 3-year old and \$200 in school expenses for the 11-year old; and (2) the debtor's Schedule J listed charitable and religious contributions of \$667 per month, whereas the debtor's 2015 tax return listed only \$500 in cash contributions for the entire year and the debtor was unable to recall at the meeting of creditors how much she contributes. Five days after the meeting of creditors, and apparently in response to the trustee's remarks at the meeting, the debtor filed an amended Schedule J on which she reduced her charitable and religious contributions by \$600 - to \$67 per month. She also increased her transportation costs by \$100. The amended Schedule J made no change in the amount listed for childcare and children's education expenses, \$1,360.

The amended Schedule J was filed the same day as, but before, the trustee's objection to confirmation was filed. A week before the hearing on the trustee's objection, the debtor filed another amended Schedule J. This time, she reduced the childcare and children's education costs by \$760, to \$600, still \$200 more than she testified to at the meeting of creditors. At the same time, she increased her expense for food by \$200; for clothing by \$100; for personal care by \$100; and for transportation by \$50, and added expenses for vehicle registration, vehicle repair, BART, BART parking, and FastTrack totaling \$310. These increases and additions, totaling \$760, were not included in the figures the debtor had twice before - on her original and first amended Schedules J - sworn under oath were true. And, of note, the increases and additions totaled exactly the same amount as the amount by which the debtor reduced her childcare and children's education costs.

Apparently aware these changes were likely to draw comment, the debtor filed a declaration "in support of" her second amended Schedule J in which she testified: "I have decreased my childcare and education costs to reflect the actual amount I spend per month on this expense." Debtor's Decl., DN 32, ¶ 2. The debtor offered no explanation of why she falsely inflated the figure by such a dramatic amount - \$760 (and maybe \$960<sup>1</sup>) - in not one but two different Schedules J - the original and the first amended ones. Based on the foregoing, the court concludes that the debtor was forced to decrease this expense by what the trustee discovered at the meeting of creditors; namely, that she had given false testimony on two different Schedules J in an attempt to benefit herself at the expense of her creditors. And although the debtor purports to explain the other increases and additions,<sup>2</sup> she does not explain why the true figures, if they are the true figures, were not included on her original and first amended Schedules J. She also does not explain why she included on her original Schedule J charitable and religious contributions at \$600 higher than the amount the trustee discovered at the meeting of creditors was correct.

Finally, the debtor's declaration filed in support of her second amended Schedule J raises an additional question about her veracity. She states that her household is comprised of her 12-year old daughter, her adult daughter, and her grandson, presumably, her adult daughter's son. She states, "My adult daughter

works but does not make enough money to pay household expenses." DN 32, ¶ 1. Thus, so far as the court can tell, the debtor is supporting her adult daughter and her daughter's son completely, with no contribution from the daughter. The debtor offers no information about how her daughter spends whatever money she earns, however limited.

To conclude, the court finds that the increases and additions on the second amended Schedule J reflect an attempt to manipulate the numbers to offset, for the sole benefit of the debtor and her family and at the expense of creditors, the amount by which the trustee "caught" the debtor overstating her childcare and children's education costs on her original Schedule J. The debtor has no qualms about now candidly admitting she has reduced that amount to "the actual amount I spend per month on this expense" but she expects the court to believe her when she says she has had to add the \$15 per day she spends on BART tickets and parking and to take her word for it that those expenses and the others were not included in the figures in two earlier Schedules J. The court finds, based on the second amended Schedule J - the one supporting the debtor's proposed plan, as compared with her original and first amended Schedules J, signed under oath, and her failure to satisfactorily explain the discrepancies that the plan is not proposed in good faith.

The debtor has filed a reply to the trustee's opposition in which she requests additional time to file a supplemental declaration to address the trustee's concerns about her expenses. First, the debtor took the full 14 days from the petition date in which to prepare and file her original schedules, schedules she had a fundamental duty to ensure were true, complete, and accurate. In the five months since then, she has filed two more Schedules J, increasing her various expenses and adding new ones only in response to the trustee's discoveries that she had significantly overstated - by over \$1,300 per month combined - her expenses for charitable and religious donations and childcare and children's education costs. And as described above, her explanations thus far have generated yet another concern - the fact that her adult daughter works but the debtor supports her and her son with no contribution from the daughter. In short, the various Schedules J are facially inconsistent and the debtor has had more than sufficient opportunity and incentive to explain the discrepancies. In these circumstances, the court is not inclined to allow the debtor more time. Accordingly, the motion will be denied.

In the event the debtor files another motion to confirm a plan, the court cautions the debtor that there is a service defect with the present motion. The debtor failed to serve Citibank and the City of Stockton, listed on her Schedule E/F. Thus, the debtor failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b).

The court will hear the matter.

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- 1 As the trustee points out, although the debtor decreased the childcare and children's education costs on her second amended Schedule J, they are still \$200 higher than what she testified to at the meeting of creditors.
  - 2 "I have increased my Food and housekeeping supplies expenses because there are 4 people in my household." DN 32, ¶ 1. "I have increased my Personal Care Products and Services to provide for hair cuts and services for my household." ¶ 4. "I have added an expense for yearly vehicle registration." ¶ 6. And so on.

7. 16-25219-D-13 DAVID/WIRIBEA ADUAKO  
TOG-6

MOTION TO CONFIRM PLAN  
4-17-17 [99]

**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. 16-26623-D-13 LEZLI STOWERS  
STO-2

MOTION TO CONFIRM PLAN  
4-18-17 [54]

**Final ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve either of the creditors who have requested special notice in this case (DNs 9, 23) at their designated addresses, as required by Fed. R. Bankr. P. 2002(g). The court brought this service issue to the moving party's attention when it denied an earlier motion to confirm an amended plan, but the problem has not been corrected.

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

9. 17-21330-D-13 HOWARD/MARJORIE BINDER  
HWW-2

MOTION TO VALUE COLLATERAL OF  
A-L FINANCIAL CORP.  
5-8-17 [26]

**Tentative ruling:**

This is the debtors' motion to value collateral of A-L Financial Corporation ("A-L"); namely, a 2008 Ford E350 XL extended passenger van. A-L has filed opposition and the debtors have filed a reply. For the following reasons, the motion will be denied.

The debtors testify that in their opinion, the replacement value of the vehicle when this case was filed was \$5,195. They state they drive the vehicle on a regular basis and are personally familiar with it. They add the vehicle is in good condition and has approximately 167,318 miles. They also list the various items of equipment on the vehicle.

A-L, on the other hand, has submitted a Kelley Blue Book printout showing a suggested retail value of \$8,579, after a deduction for mileage of 167,318. In reply, the debtors make three arguments. First, they point to A-L's proof of claim, which lists the value of the vehicle at \$5,195, the value the debtors are asserting. The proof of claim was signed by a branch manager of A-L, not an appraiser, and it includes no indication of where the figure came from. More troubling is that the debtors themselves have changed their testimony on the value of the vehicle. Having

taken a full 29 days to prepare and file their schedules (based on an order extending time), they came up with a value of \$7,419, which they listed on their Schedules B and D and their original plan. It was only after A-L filed its proof of claim, with the value listed at \$5,195, that the debtors filed this motion to value the vehicle, now testifying that its value when the case was filed was \$5,195. The debtors chose not to mention in this motion or their reply the fact they originally scheduled the vehicle at \$2,224 higher than presently.

The debtors also complain that A-L's KBB printout is for the wrong model vehicle and does not reflect the age and condition of the debtors' vehicle. They point to repairs and new tires they have had to pay for since the case was filed. In any event, the court is faced with conflicting evidence and it is the debtors' burden to persuade the court as to the replacement value of the vehicle. The discrepancies between the two values, \$5,195 and \$8,579, is significant enough that the court concludes the debtors have not carried their burden, and the motion will be denied. In the alternative, the court will fix the value of the vehicle at the value shown on the KBB printout, \$8,579. (This would reduce A-L's secured claim from \$13,279 to \$8,579.) The court will also consider continuing the hearing for the parties to supplement the record. If the debtors wish to supplement the record, they will also need to make the vehicle available to A-L for inspection and appraisal.

The court will hear the matter.

10. 17-22730-D-13 NORA NEW  
JCK-1

MOTION TO VALUE COLLATERAL OF  
CITICORP CREDIT/CENTRALIZED  
BANKRUPTCY  
5-9-17 [14]

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.

11. 14-28732-D-13 ALFREDO GOMEZ AND MARIA  
ERG-3 PENA

MOTION TO MODIFY PLAN  
4-22-17 [66]

Final ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. On May 23, 2017, the debtors filed another modified plan and a motion to confirm it, which they set for hearing on July 6, 2017. As a result of the filing of the new plan, the present motion is moot.

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

12. 16-27539-D-13 PETER HALAMANDARIS  
MOT-2

MOTION TO AVOID LIEN OF  
CALIFORNIA STATE FRANCHISE TAX  
BOARD  
4-22-17 [52]

**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. 16-27539-D-13 PETER HALAMANDARIS  
MOT-3

MOTION TO CONFIRM PLAN  
4-21-17 [46]

**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.

14. 17-20652-D-13 RYAN KLASSEN  
LTF-1

MOTION TO CONFIRM PLAN  
4-19-17 [33]

**Tentative ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The trustee has filed opposition. For the following reasons, the motion will be denied.

The trustee objected to confirmation of the debtor's original plan on the ground, among others, that the debtor's Schedule J included an expense of \$2,500 per month for "NFS service of debt." It is clear from later developments that this refers to payments on the debt of the debtor's non-filing spouse ("NFS"). The trustee objected that without a breakdown of that expense, he was unable to determine whether all available income was being paid into the plan, and thus, he objected that the plan was not proposed in good faith.

In response, the debtor filed an amended Schedule J on which he reduced the amount of the "NFS service of debt" from \$2,500 to \$1,371, a reduction of \$1,129. At the same time, he increased his expense for telephone, cell phone, Internet, satellite, and cable by \$100; for food by \$150; for childcare and children's education costs by \$630 (from \$250 to \$880 for one child); for personal care by \$70; for medical and dental by \$75; and for transportation by \$100. That is, he increased these living expenses by a total of \$1,125, thus offsetting almost exactly the amount by which it appears he was forced by the trustee's request for additional information to reduce his non-filing spouse's debt service payments to their true amounts. The debtor failed to offer any explanation of these conspicuous increases.

Thus, the court can only conclude the debtor was not being truthful when the original Schedule J was filed or he was not being truthful when the amended schedule was filed.

The problem was complicated, unnecessarily, by a declaration of the debtor's non-filing spouse, filed the same day as the amended Schedule J. In the declaration, the debtor's spouse listed her credit cards and student loans by name of creditor, amount of monthly payment, and, for the student loans, the balance due. Her declaration was explicit. She testified, "I have the following credit cards and am making payments as follows: [list]" and "I am servicing my student loans as follows: [list]." The total of the monthly payments on both the credit cards and

the student loans was \$721, not \$1,371 as listed for "NFS service of debt" on the amended Schedule J filed the same day and far less than the \$2,500 listed by the debtor on his original Schedule J. The declaration even included separate totals for the credit card payments and the student loan payments: "My monthly payment on all these credit cards is approximately \$150" and "My monthly payment on all my student loans is approximately \$571." Thus, even a quick glance at the declaration by the debtor's spouse should have revealed to her that the numbers were incorrect if in fact they were.

The trustee opposed this motion on the ground that the total of credit card and student loan payments listed in the debtor's spouse's declaration was only \$721, less by \$650 than the amount listed on the debtor's amended Schedule J. The trustee concluded the plan was not filed in good faith. In response, the debtor filed two documents: a "Withdrawal of Document(s) Re: Declaration of Debtor's Spouse Re: Debt Service of Non Filing Spouse," and a new declaration of the debtor's spouse. By way of the first document, the debtor purported to simply "withdraw" his spouse's original declaration ("Debtor . . . hereby withdraws" the declaration). The debtor offers no authority for the proposition that a debtor may simply "withdraw" a sworn declaration he would prefer the court not consider. And, in fact, the original declaration remains part of the evidentiary record.

In the second declaration, the debtor's spouse has, apparently arbitrarily, increased the amounts of her monthly payments on three of her credit cards (from \$27 to \$72 on one, from \$27 to \$45 on another, and from \$36 to \$60 on a third) and added a new credit card and monthly payment. The most significant change, however, is the addition of a student loan debt on which \$100,067 is owed, by far the largest of the spouse's student loans (the others total \$52,553), on which she allegedly pays \$501 per month. These changes increase the total of the debtor's spouse's monthly payments on her credit card and student loan debts from \$721 to \$1,370.

Although the debtor's unexplained "withdrawal" of his spouse's original declaration was unauthorized and ineffective, and although his spouse's signing of the original declaration under oath is troubling, the amended Schedule J filed the same day as the original declaration does appear to corroborate the spouse's second declaration. The amended Schedule J listed "NFS service of debt" in the total amount of \$1,371 and the debtor's spouse's second declaration lists a total of \$1,370. The debtor's willingness to increase various other living expenses to offset a blatant overstatement on his original Schedule J (\$2,500 for NFS service of debt) cannot be so simply excused. The court finds, based on the amended Schedule J supporting the debtor's proposed plan, as compared with his original Schedule J, that the plan is not proposed in good faith. Accordingly, the motion will be denied.

In the event the debtor files another motion to confirm a new plan, the court cautions the debtor that there is a service defect with the present motion. The debtor has \$263,794 in student loan debt, of which over \$157,000 is listed as being owed to FedLoan Servicing. The court takes judicial notice that FedLoan Servicing is an entity that "support[s] the U.S. Department of Education's ability to service student loans owned by the federal government." See FedLoan Servicing, *Who We Are*, <https://myfedloan.org/general/about/who-we-are> (last visited May 30, 2017). However, the debtor 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), or at all.

The court will hear the matter.



15. 16-23658-D-13 TERESA RAY-DEL VIGNA  
CJY-1

MOTION TO SELL  
5-11-17 [17]

16. 17-21079-D-13 CAROL/BOBBIE STEPPS  
CLH-3

MOTION TO CONFIRM PLAN  
4-24-17 [26]

17. 17-21181-D-13 JACOB ESTRADA  
RDG-3

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
4-24-17 [29]

**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.**

18. 15-27287-D-13 GINA TOSCANO  
PGM-5

MOTION TO MODIFY PLAN  
5-1-17 [80]

19. 17-21688-D-13 ROBIN/DONA JOHNSTON  
PSB-2

MOTION TO CONFIRM PLAN  
4-12-17 [19]

20. 14-24389-D-13 ROSYLIND JASPER  
MJD-2

MOTION TO MODIFY PLAN  
4-26-17 [81]

21. 17-21791-D-13 PATRICIA BROWN  
KAZ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
4-20-17 [22]

**Final ruling:**

**This objection has been resolved by stipulation of the parties. The parties shall submit a proposed order approving the stipulation.**

22. 17-21796-D-13 ARMANDO COVARRUBIAS  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
5-12-17 [20]

23. 17-21803-D-13 WILLIAM/MAGDALENA MERCER OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
5-12-17 [39]

24. 17-21913-D-13 ROBERT/JENNIFER WILLIAMS OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
5-12-17 [31]

25. 17-21715-D-13 BERENICE GRANTHAM OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
5-12-17 [26]

**Final ruling:**

**This case was dismissed on May 24, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.**

26. 17-21917-D-13 ANTONIO/FIDELIA JACQUEZ OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
5-12-17 [15]

27. 17-21917-D-13 ANTONIO/FIDELIA JACQUEZ OBJECTION TO CONFIRMATION OF  
PLAN BY M&T BANK  
5-17-17 [18]

28. 17-21930-D-13 FERGUS/KAREN MCDOUGALL OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
5-12-17 [23]

**Final ruling:**

This is the trustee's objection to confirmation of the debtors' proposed chapter 13 plan. On May 26, 2017, the debtors filed an amended plan and a motion to confirm it, set for hearing on July 6, 2017. As a result of the filing of the amended plan, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

29. 17-21930-D-13 FERGUS/KAREN MCDOUGALL OBJECTION TO CONFIRMATION OF  
PLAN BY TROJAN CAPITAL  
INVESTMENT, LLC  
5-4-17 [18]

**Final ruling:**

This is the objection of Trojan Capital Investment LLC ("Trojan") to confirmation of the debtors' proposed chapter 13 plan. On May 26, 2017, the debtors filed an amended plan and a motion to confirm it, set for hearing on July 6, 2017. As a result of the filing of the amended plan, Trojan's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

30. 11-43642-D-13 RAYMOND/CHRISTINE VARELA MOTION TO AVOID LIEN OF RJM  
JCK-2 ACQUISITIONS, LLC  
5-15-17 [51]

31.	17-21752-D-13 RDG-1	RICHARD/JENE ROSE SAMSON	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-12-17 [22]
32.	17-22052-D-13 RDG-1 .	SAMUEL MARTINEZ AND VERONICA FERREYRA	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-12-17 [13]
33.	17-21791-D-13 RDG-1	PATRICIA BROWN	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-12-17 [26]
34.	12-28479-D-13 MJD-1	DARRICK/EMELINA LOGAN	MOTION TO INCUR DEBT O.S.T. 5-24-17 [60]