

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

**June 19, 2018 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.	18-20601-D-13	KENNY BUCHMILLER	MOTION TO CONFIRM PLAN
	PGM-1		5-7-18 [19]

2.	18-20805-D-13	GRANT BROOKS	CONTINUED MOTION TO CONFIRM
	JCK-2		PLAN
			3-23-18 [23]

3. 14-24032-D-13 RICHARD/SHON ELSON  
RAC-2

MOTION FOR WAIVER OF SECTION  
1328 REQUIREMENTS  
5-13-18 [49]

**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 waiver of Section 1328 requirements 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.

4. 18-22741-D-13 MICHAEL/ORINA WHITE  
RKW-1

MOTION TO VALUE COLLATERAL OF  
LINCOLN AUTOMOTIVE FINANCIAL  
SERVICE/FORD MOTOR CREDIT  
5-7-18 [10]

**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.

5. 18-22842-D-13 SAMONN MITH  
NAR-1  
GMS LIBERTY, LLC VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-22-18 [9]

**Final ruling:**

A hearing was held on this motion and the motion was granted by an order entered on June 5, 2018. As such, the matter is removed from calendar as moot.

6. 17-27554-D-13 JASMEL/AMRIT SINGH  
AF-4

CONTINUED MOTION TO CONFIRM  
PLAN  
3-26-18 [59]

7. 18-20855-D-13 WALTER/SHIRLEY SAUNDERS CONTINUED OBJECTION TO  
AP-1 CONFIRMATION OF PLAN BY U.S.  
BANK, N.A.  
4-17-18 [41]

**Final ruling:**

**The hearing on this matter is continued to July 10, 2018 at 10:00 a.m., to be heard with the debtors' objection to the claim of this objecting creditor.**

8. 18-20855-D-13 WALTER/SHIRLEY SAUNDERS CONTINUED OBJECTION TO  
RDG-2 CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
4-16-18 [35]

**Final ruling:**

**The hearing on this matter is continued to July 10, 2018 at 10:00 a.m., to be heard with the debtors' objection to the claim of this objecting creditor.**

9. 18-20855-D-13 WALTER/SHIRLEY SAUNDERS OBJECTION TO CLAIM OF U.S.  
TAG-1 BANK, N.A., CLAIM NUMBER 5  
4-25-18 [50]

**Final ruling:**

**The hearing on this matter is continued to July 10, 2018 at 10:00 a.m., to be heard with the debtors' objection to the claim of this objecting creditor.**

10. 17-26662-D-13 KATHERINE SOUZA MOTION FOR COMPENSATION FOR  
RKW-3 RANDALL K. WALTON, DEBTOR'S  
ATTORNEY  
5-21-18 [113]

11. 17-27468-D-13 RYAN KLASSEN  
AP-1  
JPMORGAN CHASE BANK, N.A.  
VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-16-18 [39]

**Final ruling:**

This matter is resolved without oral argument. This is JPMorgan Chase Bank, N.A.'s motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

12. 17-27468-D-13 RYAN KLASSEN  
JCK-2

MOTION TO MODIFY PLAN  
5-14-18 [29]

**Final ruling:**

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied because both the motion and the notice give the hearing date as June 19, 2018 in the caption but July 19, 2018 in the text.

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

13. 15-25770-D-13 ERIC BARBARY AND MARIAN  
PGM-3 CORK-BARBARY

MOTION TO MODIFY PLAN  
5-4-18 [101]

14. 18-21972-D-13 THOMAS OGLE  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
5-23-18 [21]

15. 18-21973-D-13 MARVIN GUILLORY  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
5-23-18 [13]

16. 17-24578-D-13 KATHY FEENEY  
MKM-6

MOTION TO CONFIRM PLAN  
5-1-18 [79]

**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.

17. 18-20881-D-13 ANSEL CLIATT  
HWW-2

MOTION TO VALUE COLLATERAL OF  
CONSUMER PORTFOLIO SERVICES,  
INC.  
5-15-18 [34]

**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.

18. 18-20881-D-13 ANSEL CLIATT  
HWW-3

MOTION TO CONFIRM PLAN  
5-15-18 [37]

**Final ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party gave only 35 days' notice of the hearing rather than 42 days', as required by LBR 3015-1(d)(1) and applicable rules.

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

19. 18-20491-D-13 KEVIN/BERTHA ALLEN MOTION TO CONFIRM PLAN  
JAD-1 4-17-18 [23]

**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. 16-26098-D-13 PAUL RODRIGUES MOTION TO MODIFY PLAN  
JM-4 5-10-18 [56]

21. 18-22146-D-13 ADRIAN GESMUNDO OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
5-29-18 [20]

22. 18-22053-D-13 JULIE WALLNER OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
5-29-18 [16]

23. 17-27960-D-13 CRAIG GILMORE  
GMW-4

MOTION TO EXTEND TIME  
6-5-18 [105]

24. 18-20878-D-13 MONICA HERRERA  
PLC-1

MOTION TO EMPLOY JIMMY R. HICKS  
AS REALTOR(S)  
6-5-18 [45]

**Tentative ruling:**

This is the debtor's motion to employ Jimmy R. Hicks as a real estate agent to market and sell her residence. The court has a serious question about Mr. Hicks' supporting declaration and the debtor's counsel's role in preparing and submitting it. Mr. Hicks testifies:

I do not have any relationship with the Debtor, its creditors, the Office of the United States Trustee or any of its employees, or other significant party in interest or to the Debtor's attorneys. I am not and have not been an equity security holder or insider of the Debtor; have no connection to any insider of the Debtor or an insider of an insider of the Debtor; am not and was not an investment banker for any outstanding security of the Debtor; am not and was not an investment banker for a security of the Debtor, or an attorney for such an investment banker in connection with the offer, sale or issuance of any security of the Debtor; am not and was not, a director, officer or key executive of the Debtor or of any investment banker for any security of the Debtor.

Declaration of Jimmy R. Hicks, filed June 5, 2018, ¶ 8.

This language is troubling for several reasons. Much of it does not apply to the debtor in this case, who is an individual and therefore does not have equity security holders, officers, directors, or key executives, and, presumably, does not sell securities. The reference to "the Debtor [and] its creditors" reflects a failure to tailor the declaration to this debtor and this case. And noticeably, the declaration states Mr. Hicks does not have any "relationship" with the debtor or [her] creditors and has no "connection" to any insider of the debtor or an insider of an insider of the debtor, whereas the required language refers to all "connections" with the debtor, creditors, and any other party in interest, or their respective attorneys and accountants. See Fed. R. Bankr. P. 2014(a); LBR 2014-1(a).

Perhaps most troubling is a declaration filed by the debtor in response to objections to plan confirmation filed by the trustee and a creditor. The objecting parties both raised the issue that feasibility of the plan was dependent on a \$1,539 per month contribution from someone named on the debtor's Schedule I as Angie Mattos, whereas there was no declaration from that individual about her ability and

willingness to make that contribution. In response, the debtor filed a declaration of someone named Jim Hicks, who testified, "I will assist Monica Ann Herrera with her Chapter 13 plan payment to the Trustee to the extent necessary, up to the entire payment amount." Declaration of Jim Hicks, filed April 19, 2018, ¶ 2.1 If the Jim Hicks who signed that declaration is the same person who signed the declaration of Jimmy R. Hicks in support of the present motion, the court will conclude that because he was willing to guarantee the payment of all of the debtor's plan payments, Jimmy R. Hicks has a "connection" with the debtor that he failed to disclose and that precludes his employment. Thus, the court intends to issue an order to show cause why the debtor's counsel should not be sanctioned pursuant to Fed. R. Bankr. P. 9011(b)(3).

The court is particularly concerned with (1) the apparent careful crafting of the current declaration, which states Mr. Hicks does not have any "relationship" with the debtor, but as far as "connections" are concerned, limits his testimony to "any insider of the Debtor or an insider of an insider of the Debtor"; and (2) the inclusion of unnecessary, inappropriate, and distracting language about investment bankers, attorneys for investment bankers, securities of the debtor, and officers, directors, and key executives of the debtor.

If the Jim Hicks who signed the declaration filed April 19 is not the Jimmy R. Hicks who signed the declaration supporting this motion, the court will require a supplemental declaration in which Mr. Hicks testifies to the required lack of connections as listed in the applicable rules. Thus, the court will consider whether to issue an order to show cause. The court will hear the matter.

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- 1 The declaration provided no information about Mr. Hicks' ability to assist the debtor or any basis on which he might be expected to help her. Except for the concluding oath and an introductory statement that he is over 18 years old and if called to testify, would testify as follows, the sentence quoted above is the entire declaration.