

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

June 24, 2014 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.	13-22206-D-13	JANINE SUTTI	MOTION TO MODIFY PLAN
	WW-2		5-6-14 [43]

2.	09-39610-D-13	ARMANDO/KRISTINE PEDROZA	MOTION TO VALUE COLLATERAL OF
	JDP-1		CITIBANK, N.A.
	Final ruling:		5-16-14 [47]

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Citibank, 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 Citibank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

3.	14-25017-D-13	JAMES VAUGHN	MOTION FOR RELIEF FROM
	ADR-1		AUTOMATIC STAY AND/OR MOTION
	REO A&D, LLC VS.		FOR ADEQUATE PROTECTION
			5-27-14 [32]

4.	12-22520-D-13	ROXANA NAJERA	MOTION TO MODIFY PLAN
	CJY-6		5-16-14 [102]

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.	13-35922-D-13	ROBERT/JEANNETTE RUNTAL	MOTION TO CONFIRM THIRD AMENDED
	PJE-2		PLAN
			4-30-14 [33]

Final ruling:

This is the debtors' motion to confirm a third amended chapter 13 plan. The motion will be denied for the following reasons. First, as the trustee points out, the debtors filed two different third amended plans, one on April 29, 2014 and one on April 30, 2014. (Although the plans are similar, they are not identical, yet both are entitled third amended plan.) Thus, the trustee, creditors, and the court are unable to determine which plan the debtors are seeking to confirm. Second, the proof of service evidences service of the debtors' second amended plan, motion to confirm second amended plan, notice of motion to confirm second amended plan, and declaration supporting motion to confirm second amended plan. There is no evidence of service of this motion, the notice of hearing on this motion, or either of the third amended plans.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

6.	14-20926-D-13	LEROY JOHNSON	MOTION TO CONFIRM PLAN
	JCK-2		5-7-14 [34]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

7. 14-21631-D-13 MICHAEL/NANNETTE FARIA MOTION TO CONFIRM PLAN
ARS-1 5-21-14 [23]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons. First, the moving parties gave only 34 days' notice of the hearing rather than 42 days', as required by LBR 3015-1(d)(1) and applicable rules. Second, the moving parties filed their schedules two weeks after the petition was filed, but they did not amend their master address list to include all creditors listed on their schedules. Thus, when they served this motion, the PACER mailing list, which they utilized for service, did not include all creditors. As a result, the moving parties failed to serve Financial CR Network, listed on their Schedule F, and Fair Realty and Development, listed on their Schedule H. (With regard to creditors listed on Schedule H, the moving parties' counsel is referred to Fed. R. Bankr. P. 1007(a)(1).) As a result, the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b).

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

8. 12-23433-D-13 LAURA MANZO MOTION TO VALUE COLLATERAL OF
HWW-1 CITY OF STOCKTON C/O
AMERINATIONAL COMMUNITY
SERVICES, INC.
5-27-14 [32]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of City of Stockton c/o Amerinational Community Services, Inc. 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 City of Stockton c/o Amerinational Community Services, Inc.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

9. 12-23433-D-13 LAURA MANZO MOTION TO VALUE COLLATERAL OF
HWW-2 WELLS FARGO BANK, N.A.
5-27-14 [37]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Wells Fargo 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 debtor's 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 Wells Fargo Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

10. 14-20533-D-13 JACOB WINDING
JW-1

MOTION TO RECONSIDER HEARING RE
MOTION FOR RELIEF FROM
AUTOMATIC STAY (DOC. 39)
5-23-14 [73]

Final ruling:

This case was dismissed on May 29, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

11. 14-21035-D-13 QUANG NGUYEN
DAT-3

MOTION TO CONFIRM PLAN
5-9-14 [44]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons. First, the moving party failed to serve Kristine Hau Tran, the debtor's estranged spouse, listed on the debtor's Schedule H as a co-debtor on the mortgage on the debtor's rental property. The debtor was required to list Kristine Hau Tran on his master address list (Fed. R. Bankr. P. 1007(a)(1)), which he did not do, and given the very broad definitions of "creditor" and "claim" under the Bankruptcy Code (§ 101(5) and (10)), the debtor was required to serve this motion on Kristine Hau Tran, pursuant to Fed. R. Bankr. P. 2002(b). Second, the notice of hearing does not contain the cautionary language required by LBR 9014-1(d)(3), and the cautionary language the notice does contain is unintelligible. Third, the proof of service does not adequately evidence the manner of service, stating only that the documents were placed in a sealed envelope addressed as follows, and that the envelope was deposited in the United States Post Office at San Jose. The declarant does not testify that postage was fully prepaid.

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

12. 14-20036-D-13 MICHAELA TORRES

MOTION TO CONFIRM PLAN
5-19-14 [71]

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 papers do not contain a docket control number, as required by LBR 9014-1(c); (2) 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; and (3) the exhibit referred to in the proofs of service, allegedly listing the additional parties served, is not attached to the proofs of service; thus, so far as the record reveals, the moving party served only the chapter 13 trustee and the United States Trustee, and failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b).

The motion will be denied for those reasons; however, the court also has a serious concern as to whether the plan has been proposed in good faith. The debtor's original Schedule I in this case showed her only income as income from her work as a massage therapist, \$2,600 per month gross. The trustee objected to confirmation of the debtor's original plan on the ground, among others, that her

Schedule I did not disclose the \$500 per month she receives from her adult son (who apparently lives in the debtor's home - he is listed as a dependent on her Schedule I), and did not disclose the \$1,100 per month she receives in rental income, as she testified to at the meeting of creditors.

In response to the trustee's objection, the debtor filed an amended Schedule I, on which she added both of those sources of income (although she added only \$950 per month in rental income, whereas, according to the trustee, she had testified she receives \$1,100). Those additions brought the debtor's total income, as reported on her amended Schedule I, to \$4,050 per month. She did not, however, file an amended Schedule J to show her monthly net income as increased accordingly. Further, the day she filed this motion, the debtor filed a second amended Schedule I, on which she showed the \$500 per month from her son and the \$950 in rental income, but showed her work income as only \$1,600 per month, \$1,000 lower than she had reported on her original and first amended Schedules I. Thus, she now reports her total income as \$3,050.

The debtor has offered no explanation as to why her work income has suddenly dropped, and the court is left to conclude that, once the trustee discovered two sources of undisclosed income, the debtor simply chose to adjust her work income so she could continue to propose a plan that pays 0% to her general unsecured creditors. The court notes that with the debtor's income at \$4,050 per month, as reported on her first amended Schedule I and amended Form 22C, the debtor could pay 100% of her estimated general unsecured claims in just a few months. Under these circumstances, the debtor has failed to meet her burden of demonstrating that her plan has been proposed in good faith.

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

13. 14-23842-D-13 ANGELA WARREN-BASS
JCK-2

MOTION TO CONFIRM PLAN
5-9-14 [28]

14. 09-39443-D-13 ROBERTO/SOFIA BARRETO
JDP-1

MOTION TO VALUE COLLATERAL OF
JP MORGAN CHASE BANK, N.A.
5-13-14 [41]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of JP Morgan 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 JP Morgan Chase Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

15. 12-27843-D-13 JEFFERY/BEVERLY BROOKS MOTION TO SELL
CJY-5 5-29-14 [62]
16. 14-23543-D-13 DAVID GREENE OBJECTION TO CONFIRMATION OF
RCO-1 PLAN BY U.S. BANK, N.A.
5-7-14 [21]
17. 12-22744-D-13 CLYDE/GAYLE WILSON MOTION TO WAIVE THE 11 U.S.C.
PGM-9 §1328 REQUIREMENT FOR
JOINT DEBTOR, GAYLE E. WILSON
5-14-14 [261]

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 to waive joint debtor, Gayle E Wilson's 11 U.S.C. § 1328 Requirement is supported by the record. As such the court will grant the motion to waive joint debtor, Gayle E Wilson's 11 U.S.C. § 1328 Requirement. Moving party is to submit an appropriate order. No appearance is necessary.

18. 11-33464-D-13 THEODORE/APRIL GEMMILL CONTINUED NOTICE OF DEFAULT AND
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
3-5-14 [53]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtors' 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 debtors' original plan on the ground that the debtors had failed to disclose on their Schedule I the \$1,000 per month their adult son, who resides in their household, receives from social security. The trustee also objected that the plan was not feasible, indicating the plan payment would need to be at least \$895 to be feasible as proposed, paying a 36% dividend. In response, the debtors filed an amended Schedule I, on which they added their son's social security income, \$1,040 per month, thereby increasing their total household income by that amount. They also, however, filed an amended Schedule J - as the trustee points out, just four months after this case was filed, on which they increased their household expenses, including electricity and gas, water and sewer, food, clothing and dry cleaning, personal care products, recreation, and charitable contributions, by a total of \$684 per month. The increased income and increased expenses resulted in monthly net income of exactly \$895, the amount the trustee had indicated would be needed to pay the 36% dividend originally proposed by the debtors. Thus, despite the trustee's discovery of \$1,040 per month in undisclosed income, the debtors propose to share only \$356 of that with their creditors, exactly the amount needed to meet the trustee's feasibility objection to their original plan.

The trustee objects to the present plan because the debtors are delinquent, and also because they have failed to explain those numerous budget changes so soon after their case was filed. The court concludes, absent any explanation from the debtors, that they have simply manipulated their reported expenses so as to satisfy the trustee's feasibility issue with their plan while keeping for themselves the majority of the income they originally chose not to disclose, which the trustee discovered. The court is aware of and accepts the debtors' representation, in both their original and amended schedules, that their son is severely handicapped; however, they have included on both Schedules J an extra \$250 for miscellaneous expenses for him. Further, the trustee, creditors, and the court should be able to rely on debtors to accurately report their expenses at the outset of the case, regardless of the unfortunate situation of either a debtor or a dependent.

Under these circumstances, the court concludes that the debtors have failed to satisfy their burden of demonstrating that the plan has been proposed in good faith, and the motion will be denied by minute order. No appearance is necessary.

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of PRA Receivables Management 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 debtor's 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 PRA Receivables Management's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

21. 14-22273-D-13 JUGJEEV/MINERVA MANGAT CONTINUED MOTION TO SELL
AVN-2 4-29-14 [37]

Final ruling:

This case was dismissed on May 29, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

22. 13-32384-D-13 JEREMY HECHT MOTION FOR RELIEF FROM
TJS-1 AUTOMATIC STAY AND/OR MOTION
JPMORGAN CHASE BANK, N.A. FOR ADEQUATE PROTECTION
VS. 5-15-14 [29]

Final ruling:

This case was dismissed on May 29, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

23. 14-21284-D-13 SAUL BERNABE MOTION TO CONFIRM PLAN
HWW-3 5-5-14 [39]

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.

24. 12-37198-D-13 JESUS HERRERA AND ROSA MOTION FOR RELIEF FROM
JHW-1 GOMEZ AUTOMATIC STAY
FORD MOTOR CREDIT COMPANY, 5-23-14 [29]
LLC VS.

Final ruling:

This matter is resolved without oral argument. This is Ford Motor Credit Company, LLC'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 debtors are 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. Accordingly, the court will grant relief from stay by minute order. As the debtors are not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

25. 14-23903-D-13 JOHN/ANA GONSALES
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
5-30-14 [17]

26. 14-20533-D-13 JACOB WINDING
JW-4

MOTION FOR STAY PENDING APPEAL
6-6-14 [99]

Final ruling:

The court issued an order denying this motion on June 16, 2014. As such, the matter is removed from calendar. No appearance is necessary.

27. 11-36935-D-13 RAMIRO/KIMBERLY BARRAGAN
CLH-2

CONTINUED MOTION TO APPROVE
LOAN MODIFICATION
5-13-14 [51]

28. 14-21035-D-13 QUANG NGUYEN
KK-2

OBJECTION TO CONFIRMATION OF
PLAN BY HSBC MORTGAGE SERVICES
6-10-14 [57]

29.	14-23543-D-13 RDG-3	DAVID GREENE	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-30-14 [27]
30.	14-23843-D-13 RDG-1	ELVIN/HURLENE BAKER	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-30-14 [17]
31.	14-23843-D-13 EAT-1	ELVIN/HURLENE BAKER	OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 6-2-14 [20]
32.	14-23451-D-13 RDG-1	ERNESTO/MARIA ORTEGA	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-30-14 [22]

33.	13-24557-D-13 HWW-6	ZENAIDA HERRERA	CONTINUED MOTION TO MODIFY PLAN 5-3-14 [70]
34.	11-31064-D-13 RLB-5	DAVID REID AND TRACEY BRADSHAW	MOTION TO SELL 6-9-14 [113]
35.	09-30578-D-13 CJY-1	EUGENE/FELITA CRUSTO	MOTION TO INCUR DEBT 6-5-14 [88]
36.	14-23584-D-13 RDG-1	VICTOR CASTRO-TORRES	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-30-14 [23]

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 brought 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.

The court may extend the stay "only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed" § 362(c) (3) (B). A case is presumptively not filed in good faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the prior case or any other reason to conclude that the later case will be concluded with a confirmed plan that will be fully performed. § 362(c) (3) (C) (i) (III). The debtor's schedules, statements, and proposed chapter 13 plan filed in the prior and present cases are almost identical; thus, they support the conclusion that there have been no substantial changes in the debtor's financial or personal affairs since the dismissal of the prior case. Nothing in the present motion or supporting declaration supports a contrary conclusion. Thus, the presumption arises that the present case was not filed in good faith.

The presumption may be rebutted by clear and convincing evidence that the present case was filed in good faith. § 362(c) (3) (C). The debtor's prior case was filed on January 23, 2014. It was dismissed on May 29, 2014 on the trustee's motion, due to the debtor's failure to seek confirmation of an amended plan after the trustee's objection to confirmation of the debtor's original plan had been sustained. The objection to confirmation was based, among other things, on the debtor's failure to obtain pre-petition credit counseling. In his declaration supporting this motion, the debtor explains his view of what happened as follows:

On April 15, 2015, the court sustained the trustee's objection to confirmation on the basis that there was a violation of Section 109(h) (1) of the bankruptcy code. If no one had objected on that basis, then the deficiency in that the pre-filing consumer credit counseling certificate had not been done prior to case filing, would have been deemed waived upon plan confirmation. However, since there was an objection on that basis, plan confirmation became impossible. The prior case suffered from this Achilles' heel. I filed the prior case In pro per. The court clerk's staff indicated to me at the counter that I could file the certificate later. Otherwise, I would have done the prefiling counseling course at that time and filed my bankruptcy case either later that afternoon or early the next morning. Alternatively, I might have done the certificate later that day and found some attorney to electronically file the case that night.

Decl., filed June 11, 2014, at 1:28-2:16.

That testimony conflicts with the debtor's sworn testimony in the prior case concerning the credit counseling requirement. The debtor filed the case in pro se, without a credit counseling certificate. Instead, on his Exhibit D, he testified under penalty of perjury as follows:

I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the seven days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy case now. I have not been able to complete the consumer credit counseling class due to an imminent Trustee sale of my home. Furthermore, I received no actual notice of the pending sale date.

Exhibit D - Individual Debtor's Statement of Compliance with Credit Counseling Requirement, filed Jan. 23, 2014, with the debtor's petition commencing Case No. 14-20591. On February 5, 2014, Richard Jare substituted into the case as attorney for the debtor, and on February 8, 2014, the debtor filed another Exhibit D, along with a credit counseling certificate showing the credit counseling was received on February 5, 2014 (after the case had been commenced). On that second Exhibit D, the debtor again testified that he had requested credit counseling services from an approved agency, but had been unable to object the services during the seven days from the time he made the request, and that exigent circumstances merited a temporary waiver of the requirement. He described the exigent circumstances as "Foreclosure Pending, Completed Certificate on Feb. 5, 2014."

Those statements - that the debtor requested but was unable to obtain credit counseling services prior to filing the case - conflict with his present testimony that if the clerk's staff had not told him he could file the certificate later, he "would have done the prefiling counseling course at that time and filed [his] bankruptcy case either later that afternoon or early the next morning." The conflicting statements, both signed under oath, are not indicative of good faith, but of a willingness to sign whatever suits the debtor's purposes at any given time. The debtor's declaration includes only conclusory statements about the plan's feasibility and the debtor's good faith; it contains no other testimony of a factual nature from which the court could conclude that the debtor has shown, by clear and convincing evidence, that this case was filed in good faith. Accordingly, the motion will be denied.

The court will hear the matter.