

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 24, 2018 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.	17-27504-D-13	LILLIAN GLEASON	MOTION TO CONFIRM PLAN
	RLG-6		6-12-18 [75]

2.	17-27504-D-13	LILLIAN GLEASON	MOTION TO VALUE COLLATERAL
	RLG-7		AND/OR TO AVOID LIEN OF
			DEPARTMENT OF THE TREASURY -
			INTERNAL REVENUE SERVICE
			6-12-18 [79]

Final ruling:

This is the debtor's motion to value collateral of the Internal Revenue Service (the "IRS"). The motion will be denied for the following reasons: (1) the moving party served the IRS at only one of the three addresses required by LBR 2002-1(c);

(2) the notice of hearing does not contain the caution required by LBR 9014-1(d)(3)(B)(ii) or the information required by LBR 9014-1(d)(3)(B)(iii); and (3) the debtor has failed to overcome the prima facie validity of the IRS's filed proof of claim, and thus, has failed to demonstrate she is entitled to the relief requested, as required by LBR 9014-1(d)(3)(D). The IRS has filed an amended proof of claim asserting, among other claims, a secured claim in the amount of \$2,733.50 based on a notice of federal tax lien. Federal tax liens are generally secured by both real property and personal property. Here, the debtor asserts only that there is no equity in her real property available to secure the tax lien. Her amended Schedule A/B reveals sufficient unencumbered personal property assets to fully secure the IRS's lien.

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

3.	18-20805-D-13	GRANT BROOKS	MOTION TO DISMISS CASE
	ANF-1		5-29-18 [45]

Tentative ruling:

This is the motion of Direct Capital Corporation to dismiss this case pursuant to § 707(b) of the Bankruptcy Code. The debtor has filed a response and an amended response. The motion will be denied because § 707(b), by its own terms and as provided by § 103(b), applies only in chapter 7 cases and not in chapter 13 cases. The court will hear the matter.

4.	18-20805-D-13	GRANT BROOKS	CONTINUED MOTION TO CONFIRM
	JCK-2		PLAN
			3-23-18 [23]

Tentative ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The trustee and creditor Direct Capital Corporation ("Direct Capital") each filed an opposition and the debtor filed responses to both.¹ For the following reasons, the motion will be denied. The court will also lift the automatic stay to permit a pending state court action between the debtor and Direct Capital to go forward.

The hearing on this motion has been continued twice. The debtor stated in his original response to Direct Capital's opposition that if he prevailed on his pending motion to vacate a wage garnishment order in state court, Direct Capital would not be a creditor of the debtor's and would not have standing to oppose this motion. He advised the court his motion to vacate was set for hearing on May 16 and suggested the hearing on this motion to confirm be continued to June 19 to allow time for resolution of the motion to vacate. At the continued hearing on this motion, on June 19, the debtor's counsel advised the court the motion to vacate would be "going under submission to the [state] court" the next day, June 20; thus, the hearing on this motion to confirm plan was continued again. There was a discussion at the June 19 hearing as to how the state court action could proceed given the automatic stay in the debtor's bankruptcy case. The debtor's counsel said he thought the automatic stay applied but he did not explain why the debtor has proceeded in the state court with his motion to vacate. Direct Capital's position appeared to be that the automatic stay applied to a motion to tax costs it had brought against the debtor but not to the debtor's motion to vacate. Since June 19, neither party has apprised this court of the status of the state court action.

Based on the record in this case and the record in the state court action,² it appears the debtor's motion to vacate the wage garnishment order arose as follows. Direct Capital obtained a judgment against Mary Brooks, who at that time was the debtor's spouse. Direct Capital then obtained an order permitting it to garnish the debtor's wages on the basis that its judgment constituted a community obligation. The debtor appealed from the garnishment order. After he filed his notice of appeal but before the appellate court issued its ruling, the debtor filed for divorce and he and his then spouse, Mary Brooks, stipulated to dissolution of the marriage and division of the community assets. The debtor received all of the community assets, leaving, Direct Capital contends, no assets for his spouse's creditors. The debtor argued in the appeal that the stipulated dissolution judgment, as the appellate court phrased it, "trump[ed] the garnishment order." Direct Capital Corporation v. Brooks, No. C081349 (Cal. Ct. App. Aug. 30, 2017), at p. 10 (opinion attached to Direct Capital's proof of claim). In August of 2017, the appellate court affirmed the trial court's order allowing Direct Capital to garnish the debtor's wages, without prejudice to a motion in the trial court to vacate or modify that order based on the dissolution judgment.

In November of 2017, Direct Capital filed a motion in the trial court to fix costs of appeal and to add the costs to its judgment and the debtor filed a motion to vacate the garnishment order. Both motions were set for hearing on February 7, 2018. By tentative ruling issued February 6, 2018, citing the complexity of the issues and its own busy calendar, the court continued the hearings to May 16. On February 14, 2018, the debtor filed this chapter 13 case but did not notify the state court of the filing.

On May 15, the state court issued a tentative ruling (1) to grant Direct Capital's motion for costs but deny its request for attorney's fees for the appeal and (2) to deny the debtor's motion to vacate the garnishment order. At the hearing the next morning, May 16, the debtor's state court attorney advised the state court of the debtor's bankruptcy filing. The state court ruled that Direct Capital's motion to fix costs and add them to its judgment was stayed. The state court noted in its minute order issued following the hearing that the debtor had failed to provide notice of the automatic stay as required by the California Rules of Court.³

Direct Capital, however, advised the state court the hearing could proceed on the debtor's motion to vacate the garnishment order, and the debtor's counsel proceeded to offer the state court additional authority for his motion that had not been provided in his papers. In other words, both parties behaved in the state court as if the automatic stay applied to Direct Capital's motion to fix costs and add them to its judgment but not to the debtor's motion to vacate the garnishment order. The state court set a schedule for further briefing on the debtor's motion and stated the matter would be taken under submission on June 20. The morning of May 16, after the hearing, the debtor filed in the state court action a Notice of Stay of Proceedings with a copy of the Notice of Chapter 13 Bankruptcy Case attached.

At the May 16 hearing, the state court gave the debtor until May 22 to provide the court and opposing counsel with the official citation to the new case the debtor's counsel had cited at the hearing. The debtor viewed that as an opportunity to file a five-page "Court Ordered Supplemental Points and Authorities." On June 12, as permitted by the state court, Direct Capital filed opposition, and on June 13, the state court issued the following Out of Court Minute Order:

The Court received a Notice of Stay of Proceedings filed on 05/16/2018. The Court confirms the matter is stayed pursuant to 11 U.S.C. §362(a), and any judicial proceedings conducted in violation of the automatic stay would be void. (Sindler, supra, 105 Cal.App.4th at 1353.)

The Motion to Vacate and Set Aside Wage Garnishment and Request to Maintain Stay will not be taken under submission as indicated by the Court on 05/16/2018. However it may be re-noticed when the stay is lifted or set aside.

Out of Court Minute Order, Direct Capital Corporation v. Brooks, Case No. STK-CV-UBC-2014-0006707, San Joaquin County Superior Court, filed June 13, 2018.⁴

Notwithstanding that minute order, the debtor, on June 19, filed in the state court a reply to Direct Capital's opposition to his motion to vacate, as had been permitted by the court at the May 16 hearing; that is, as permitted before the state court determined, on June 13, the debtor's motion was subject to the automatic stay. The debtor's bankruptcy attorney appeared in this court on June 19 and advised the court the debtor's motion to vacate would be taken under submission the next day, June 20 - this notwithstanding the state court's minute order of June 13 determining the motion to vacate was stayed and would not be taken under submission.

In short, the debtor filed this bankruptcy case on February 14, 2018; failed to inform the state court about it, as he was required to do immediately, thereby permitting the state court to issue a tentative ruling in May granting Direct Capital's motion in part and denying the debtor's motion; appeared in the state court the following morning, May 16, asserting that the automatic stay prevented the state court from ruling on Direct Capital's motion but presenting new authority he claimed supported his own motion; and allowed the state court to schedule further briefing on his motion.

In the meantime, on March 23, the debtor filed this motion to confirm an amended chapter 13 plan that proposed to pay a 38% dividend on general unsecured claims he estimated at an amount that included Direct Capital's claim at \$0. Since then, the debtor's bankruptcy counsel has twice requested the hearing on this motion to confirm be continued so the state court could rule on his motion to vacate the garnishment order, apparently in hopes that ruling would deprive Direct Capital of standing to oppose the motion to confirm. Just as the debtor's state court counsel failed to inform the state court of the debtor's bankruptcy filing until the day after that court had issued a tentative ruling to deny his motion to vacate, which was three months after the debtor filed this bankruptcy case, the debtor's bankruptcy counsel has never advised this court of Direct Capital's motion to fix costs and add them to its judgment and has not informed this court that the debtor was asserting the automatic stay as a shield against that motion while prosecuting his own motion to vacate.

The court finds that as of this time, Direct Capital is a "creditor" under the broad definitions of "claim" and "creditor" in § 101(5) and (10) of the Code. On April 25, 2018, Direct Capital filed a timely proof of claim in this case, for \$74,060. The fact that the debtor may dispute the claim does not mean Direct Capital is not a "creditor" in this case. See § 101(5) and (10). The debtor has not filed an objection to Direct Capital's claim in this court, instead relying on state court proceedings that were clearly subject to the automatic stay. The automatic stay applies to the state court action because the debtor's position is in the nature of a defendant.⁵ The court is aware of no authority for the proposition

that the automatic stay applies to motions brought against the debtor in a state court case but not to motions brought by the debtor, and the debtor has offered no such authority.

On the other hand, the issues involved are issues of state law best determined by the state court. This court therefore intends to lift the automatic stay to permit the parties to proceed with the state court litigation;⁶ that is, to permit both parties to refile their respective motions and to take any other action they deem appropriate short of enforcement of a judgment against the debtor.

Because the debtor's proposed plan would provide a 38% dividend to general unsecured creditors based on a claims total that does not include Direct Capital's claim, which at this point is an allowed claim (§ 502(a)), the plan is not feasible. In addition, in light of the debtor's assertion of the automatic stay, albeit belatedly, as against Direct Capital's motion in the state court, while at the same time actively prosecuting his own motion, the debtor has not met his burden of demonstrating that the plan has been proposed in good faith. Accordingly, the motion will be denied. The court will hear the matter.

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- 1 The debtor filed initial responses to the trustee's and Direct Capital's oppositions on April 19 and May 3, 2018, respectively, and filed an additional response to Direct Capital's opposition on July 4 and an amended additional response on July 6. The court has considered all of these.
 - 2 A court "may take judicial notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." United States v. Black, 482 F.3d 1035, 1041 (9th Cir. 2007); see also Sharp v. Nationstar Mortg. LLC, 2016 U.S. Dist. LEXIS 158939, *8, 2016 WL 6696134 (N.D. Cal. 2016) ["Public records, including judgments and other court documents, are proper subjects of judicial notice."].
 - 3 "The party who requested or caused a stay of a proceeding must immediately serve and file a notice of stay and attach a copy of the order or other document showing that the proceeding is stayed." CRC, Rule 3.650(a).
 - 4 The Request to Maintain the Stay the court was referring to was the debtor's request, included in his motion to vacate the garnishment order, to maintain the stay pending appeal the court had issued at the commencement of the debtor's appeal - the debtor asked that the state court continue that stay until it ruled on his motion to vacate.
 - 5 The original defendant in the action was the debtor's then spouse, Mary Brooks. But the caption of the appellate court's opinion names him as "Defendant and Appellant." It is clear his position is that of a defendant, not a plaintiff.
 - 6 The court has the power under § 105(a) of the Code to lift the automatic stay sua sponte. Estate of Kempton v. Clark (In re Clark), 2014 Bankr. LEXIS 4633, *25, 26 (9th Cir. BAP 2014); In re Bellucci, 119 B.R. 763, 779 (Bankr. E.D. Cal. 1990).

5.	18-21214-D-13 JOSE PATINO APN-1 TOYOTA MOTOR CREDIT CORPORATION VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 6-19-18 [44]
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Final ruling:

This matter is resolved without oral argument. This is Toyota Motor Credit Corporation'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.

6.	18-23522-D-13 CLAUDIA ROCHA NLL-1	MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY 6-15-18 [11]
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7.	18-22825-D-13 PIERRE CHAHOUD AND SUZAN SSA-1 AKHNANA	OBJECTION TO CONFIRMATION OF PLAN BY STOCKTON MORTGAGE REAL ESTATE LOAN SERVICING CORPORATION 6-18-18 [25]
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8.	18-22825-D-13 PIERRE CHAHOUD AND SUZAN SSA-2 AKHNANA STOCKTON MORTGAGE REAL ESTATE LOAN SERVICING	MOTION FOR RELIEF FROM AUTOMATIC STAY 6-18-18 [31]
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9. 17-22229-D-13 DENNIS/SHERRY CRUZ
TBK-4

CONTINUED MOTION TO MODIFY PLAN
4-26-18 [89]

10. 17-27631-D-13 FARID DALILI
LTF-1

MOTION TO CONFIRM PLAN
6-8-18 [58]

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.

11. 16-25833-D-13 WILLIAM ANDERSON
KWS-1

MOTION TO INCUR DEBT
6-21-18 [33]

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 incur debt is supported by the record. As such the court will grant the motion by minute order. No appearance is necessary.

12. 17-23238-D-13 LAURIE CROSBY-WILSON
JCK-8

MOTION TO MODIFY PLAN
6-12-18 [91]

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.

13. 18-22241-D-13 LEYNE FERNANDEZ
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
6-11-18 [23]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The objection was brought on the ground the debtor had failed to file a spousal waiver to permit her to claim the exemptions provided by Cal. Code Civ. Proc. § 703.140(b). On June 18, 2018, the debtor filed a spousal waiver that appears to be signed by herself and her spouse. As a result of the filing of the spousal waiver, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

14. 18-22146-D-13 ADRIAN GESMUNDO
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
5-29-18 [20]

15. 18-21253-D-13 INGRID CONTRERAS
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
4-30-18 [17]

16. 18-21253-D-13 INGRID CONTRERAS
RDG-2

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
4-30-18 [20]

Tentative ruling:

This is the trustee's objection to the debtor's claim of a homestead exemption. The debtor filed opposition, the trustee filed a reply, and both parties filed supplemental briefs. For the following reasons, the objection will be overruled.¹

The debtor claims her one-half interest in her residence, which she owns with her former spouse, Javier Contreras, as exempt in the amount of \$100,000, under Cal. Code Civ. Proc. § 704.730.^{2 3} The trustee contends the exemption should be limited to \$50,000. The trustee relies on § 704.730(b), which provides that if both spouses are entitled to a homestead exemption, the exemption shall be apportioned between them, and § 704.720(d), which provides that if a judgment debtor (Javier) is not currently residing in the homestead, but his or her former spouse (the debtor) continues to reside there, the judgment debtor (Javier) continues to be entitled to

an exemption until entry of judgment or other legally enforceable agreement dividing the community property between them or until a later time specified by court order.⁴ The trustee claims there is no judgment or other legally enforceable agreement dividing the property between the debtor and Javier; thus, both are entitled to a homestead exemption and the exemption must be apportioned between them, limiting the debtor's exemption to \$50,000.

The debtor has filed a copy of the judgment dissolving her and Javier's marriage. Attached to the judgment is an agreement between the debtor and Javier that includes this provision regarding the debtor's residence:

The petitioner, Ingrid M. Contreras, will remain in the marital property located at [address]. While living at the property, Ingrid M. Contreras agrees to maintain financial responsibility, which includes mortgage payments, insurance, utility bills, HOA, maintenance, and taxes. Upon sell [sic] of the property, both the petitioner, Ingrid M. Contreras, and the respondent, Javier Contreras, will split financial liability and/or equity 50/50.

Debtor's Ex. A., filed June 19, 2018, p. 7 of Attachment to Judgment. The judgment states, "[t]his marital settlement agreement is ordered incorporated into and made a part of this judgment and the parties are ordered to comply with all of its terms." Id. at p. 10.

As a result of this judgment and agreement, Javier is no longer entitled to a homestead exemption (at least not in this property). He continued to be entitled to a homestead exemption only "until entry of judgment or other legally enforceable agreement dividing the community property," and such a judgment was entered prior to the filing of this bankruptcy case. Therefore, because the debtor and Javier are not both entitled to a homestead exemption in the property, the requirement of § 704.730(b) - for apportionment of the exemption between them - does not apply.

The trustee contends the agreement provides only for the future, not the present, division of the residence;⁵ thus, he claims, the judgment and agreement do not constitute a judgment or other legally enforceable agreement dividing the property between the debtor and Javier. The court does not agree. Subdivision 704.720(d) does not require a deed from one of the former spouses to the other or a deed from the spouses to themselves, each as to a particular percentage or other interest. Nor does it require that the property have been sold and the proceeds divided. It requires only a "judgment" or a legally enforceable "agreement." Here, there was such a judgment and agreement.

The trustee cites the statement in the agreement that "[t]here is no community property to be divided." The trustee does not explain the relevance of this language, but the court assumes he is referring to the language in § 704.720(d) regarding "entry of judgment or other legally enforceable agreement dividing the community property" between the spouses. Apparently, his argument is that because the parties stated there was no community property, the debtor's residence was not community property and its division was not effectuated by the judgment and agreement, within the meaning of § 704.720(d).

The court is not persuaded. "For the purpose of division of property on dissolution of marriage . . . , property acquired by the parties during marriage in joint form, including property held in tenancy in common, joint tenancy, or tenancy by the entirety, or as community property, is presumed to be community property."

Cal. Fam. Code § 2581.6 In the court's view, § 704.720(d) can only refer to the division of property in a marital dissolution proceeding; thus, § 2581 applies and it does not matter, for the purpose of § 704.720(d), whether the debtor and Javier hold title to the property as joint tenants, as tenants in common, as tenants by the entirety, or as community property.

Finally, the trustee states he does not know whether Javier claims or is entitled to a homestead exemption in another property. The court does not see this question as relevant to this objection. For present purposes, what matters is that Javier is not residing in the property, the debtor is residing there, and a judgment has been entered, incorporating a legally enforceable agreement, dividing the property as between them. Thus, under § 704.720(d), Javier is not entitled to a homestead exemption in the property and the debtor's exemption need not be allocated to Javier in any amount.

For the reasons stated, the objection will be overruled. The court will hear the matter.

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- 1 The trustee also objected to two other claims of exemption, but the debtor thereafter filed an amended Schedule C which rendered the trustee's objection as to those two claims moot.
 - 2 Unless otherwise indicated, all statutory references are to the California Code of Civil Procedure.
 - 3 Because the term "former spouse," for purposes of the statutes cited herein, may mean the debtor or it may mean Javier, the court will refer to the debtor's former spouse by his first name to avoid confusion. No disrespect is intended.
 - 4 Subdivision 704.730(b) refers to "spouses," not "former spouses." Because the debtor and Javier were no longer married when the debtor filed this case, that subdivision appears at first glance to be determinative in favor of the debtor. That is, it appears that because there are not two "spouses" who may be entitled to a homestead exemption, only two "former spouses," there should be no need for an allocation of the exemption amount between them, and the debtor should be entitled to the full amount claimed, \$100,000, without further analysis. However, § 704.720(d) defines "spouse," for purposes of the homestead exemption statutes, as "includ[ing] a . . . former spouse as consistent with this subdivision." Thus, an allocation under § 704.730(b) may be required as between former spouses.
 - 5 "The Judgment in this case specifically delays division of the real property until an unspecified date in the future." Trustee's Supp. Obj., filed July 6, 2018, at 2:7-8.
 - 6 The exceptions to that rule, as stated later in § 2581, make clear that, for the purpose of division of property on dissolution of marriage, property is either community property or separate property.

17. 18-21253-D-13 INGRID CONTRERAS
RDG-3

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
6-11-18 [38]

Tentative ruling:

This is the trustee's objection to the amended schedule of exemptions the debtor filed on March 5, 2018. The trustee had earlier objected to the debtor's original schedule of exemptions, by way of an objection that is set for continued hearing on this calendar, DC No. RDG-2. The debtor's amended Schedule C filed March 5, 2018 rendered moot two of the issues the trustee raised in his objection to the original Schedule C - pertaining to a retirement plan and funds in a checking account, but made no change to the debtor's claim of a homestead exemption. Thus, the amended Schedule C did not render moot the trustee's original objection on that issue and the parties have not treated the amended Schedule C as if it rendered the trustee's original objection moot. Thus, the debtor has not filed a response to the trustee's objection to the amended Schedule C, but has continued to brief the issue in connection with the trustee's original objection, DC No. RDG-2.

The court will issue a minute order on this objection, DC No. RDG-3, determining that the court's ruling on DC No. RDG-2 will also govern this objection. The court will hear the matter.

18. 18-22053-D-13 JULIE WALLNER
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
5-29-18 [16]

19. 18-20557-D-13 RICHARD NYE
MOT-2

MOTION TO CONFIRM PLAN
6-8-18 [62]

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 served the motion, notice, and declaration, but not the plan itself, as required by LBR 3015-1(d)(1); and (2) the notice of hearing gives the hearing date as July 24, 2018 in the caption but June 19, 2018 in the text.

For the reasons stated, 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.

20. 18-21657-D-13 ROBERT/JENNIFER WILLIAMS
AOE-2

MOTION TO AVOID LIEN OF THE
BANK OF NEW YORK MELLON
6-6-18 [60]

21. 18-21657-D-13 ROBERT/JENNIFER WILLIAMS
AOE-2

MOTION TO AVOID LIEN OF CALHFA
MORTGAGE ASSISTANCE CORPORATION
6-6-18 [61]

Final ruling:

This is the debtors' motion purportedly to avoid a lien held by CalHFA Mortgage Assistance Corporation ("CalHFA"), pursuant to § 522(f) of the Bankruptcy Code. The motion will be denied for the following reasons. First, the moving parties used the same docket control number for this motion that they had used for a motion filed May 22, 2018 and another motion filed June 6, 2018 (the same day this motion was filed). This repeated use of the same docket control number for different motions is contrary to LBR 9014-1(c)(3). Second, the motion, declaration, and exhibits are all filed as a single document rather than separately, as required by LBR 9004-2(c)(1). Third, the motion and notice of hearing refer repeatedly to "avoiding the lien" of CalHFA and both indicate the motion is brought pursuant to § 522(f) of the Bankruptcy Code, whereas that section applies to the avoidance of judicial liens, not deeds of trust. The debtors identified CalHFA's lien on their Schedule D as a deed of trust and a copy of a deed of trust in favor of CalHFA is attached to the motion as an exhibit. As a matter of proper notice, the motion should have stated the debtors seek to value CalHFA's collateral and should have stated the motion was brought pursuant to § 506(a), not § 522(f).

Finally, the moving parties failed to serve CalHFA in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served CalHFA at a post office box address with no attention line, whereas service on a corporation must be to the attention of an officer, managing or general agent, or agent for service of process.¹

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

1 The moving parties' motion purportedly to avoid a lien held by the Bank of New York Mellon, also on this calendar, included all of these errors; however, because the Bank, through its servicing agent, filed a response to the motion, the court has left the motion on calendar. CalHFA has not responded to this motion, and thus, has not waived the service defect.

22. 18-21657-D-13 ROBERT/JENNIFER WILLIAMS MOTION TO CONFIRM PLAN
AOE-3 5-30-18 [44]

Final ruling:

This is the debtors' motion to confirm a proposed chapter 13 plan. The motion will be denied for the following reasons. First, the moving parties served the motion and notice of hearing but not the plan itself, as required by LBR 3015-1(d)(1). The debtors filed their plan - the plan that is the subject of this motion - on April 4, 2018, within 14 days from the date this case was filed, as required by LBR 3015-1(c)(1). Thus, the plan was served on creditors and the trustee by the Bankruptcy Noticing Center and those parties were advised by the Notice of Chapter 13 Bankruptcy Case of the deadline for filing objections to confirmation. The trustee filed a timely objection to confirmation, which has been continued to this date. Thus, the plan was filed in accordance with the procedure for confirming original plans, as set forth in LBR 3015-1(c), and there was no need for the debtors to file a motion to confirm the same plan under the procedure for confirming modified plans, as set forth in LBR 3015-1(d)(1). Having chosen to file such a motion, however, the debtors were bound to follow rules applicable to such motions, including the filing and service together of the plan and a motion to confirm it. LBR 3015-1(d)(1).

Second, the proof of service of the motion and the original notice of hearing does not sufficiently evidence service on creditors. Although there is a mailing list attached, the declarant does not state she served the parties on that list, only the United States Trustee, the chapter 13 trustee, and the debtors themselves. Third, the amended notice of hearing was not served at all on the only unsecured creditor in the case and was served on the holder of a third deed of trust, CalHFA Mortgage Assistance Corporation, at an incorrect address. CalHFA has not filed a proof of claim or request for notice; thus, the moving parties were required to serve it at the address on their Schedule D and master address list (Fed. R. Bankr. P. 2002(g)(2)); instead, they used a different address.

As a result of these service 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.

23. 18-22957-D-13 DEREK/ALICIA WOOD OBJECTION TO CONFIRMATION OF
AP-1 PLAN BY U.S. BANK, N.A.
6-20-18 [14]

24. 15-26163-D-13 JOHN/ANNETTE PAYAN
JM-3

MOTION TO MODIFY PLAN
6-12-18 [51]

25. 18-20365-D-13 RADHEY/LILLIAM SHYAM
EML-3

MOTION TO CONFIRM PLAN
6-15-18 [70]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties utilized a PACER matrix dated February 6, 2018; thus, they failed to serve the creditors who filed Claim Nos. 1 through 5 at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g)(1); (2) the moving parties failed to serve Executive Base Network, listed on their Schedule E/F, at all; thus, they failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(9); (3) the proof of service gives the service date as February 22, 2018, whereas the documents purportedly served were not signed until June 15, 2018; and (4) the notice of hearing does not contain the caution required by LBR 9014-1(d)(3)(B)(ii) or the information required by LBR 9014-1(d)(3)(B)(iii).

As a result of these service and notice 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.

26. 18-21773-D-13 DARIN/MELINDA DEOLIVEIRA
CLH-1

MOTION TO CONFIRM PLAN
6-6-18 [36]

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.

27. 18-20878-D-13 MONICA HERRERA
PLC-2

MOTION TO CONFIRM PLAN
6-19-18 [58]

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 served the motion, notice, and declaration, but not the plan itself, as required by LBR 3015-1(d)(1); and (2) the motion states repeatedly that the debtor seeks to confirm a second amended plan filed April 17, 2018, whereas the plan filed that day was not a second amended plan - it was entitled simply Amended Chapter 13 Plan.

For the reasons stated, 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. 18-23590-D-13 ANTELMO PANIAGUA

MOTION FOR TEMPORARY WAIVER OF
THE CREDIT COUNSELING
REQUIREMENT
6-8-18 [9]

Final ruling:

This case was dismissed on June 26, 2018. As a result the motion will be denied by minute order as moot. No appearance is necessary.

29. 18-24220-D-13 LEY NGAR
RWF-1

MOTION TO EXTEND AUTOMATIC STAY
7-6-18 [8]

30. 18-22825-D-13 PIERRE CHAHOUD AND SUZAN
RDG-2 AKHNANA

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE RUSSELL D.
GREER
7-5-18 [41]

31.	17-23837-D-13 PGM-4	FRANCISCO/MARIA PADILLA	CONTINUED MOTION TO CONFIRM PLAN 2-13-18 [105]
32.	17-23837-D-13 PGM-6	FRANCISCO/MARIA PADILLA	MOTION TO SELL O.S.T. 7-11-18 [170]
33.	17-23837-D-13 JB-1	FRANCISCO/MARIA PADILLA	CONTINUED MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE TO CHAPTER 7 1-30-18 [89]
34.	18-22841-D-13 RDG-1	PAUL/MARLYN JOY WINTER	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 7-5-18 [13]

35. 18-21657-D-13 ROBERT/JENNIFER WILLIAMS CONTINUED OBJECTION TO
RDG-3 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
5-11-18 [32]

Final ruling:

This is the trustee's objection to confirmation of the debtors' proposed chapter 13 plan. On July 19, 2018, the debtors filed an amended plan and a motion to confirm it. As a result of the filing of the amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary

36. 17-27960-D-13 CRAIG GILMORE CONTINUED MOTION TO CONFIRM
GMW-3 PLAN
6-5-18 [100]

37. 18-22864-D-13 ANTHONY/SINDY CESARINI OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
7-5-18 [16]

Final ruling:

This is the trustee's objection to confirmation of the debtors' proposed chapter 13 plan. On July 18, 2018, the debtors filed an amended plan and a motion to confirm it. As a result of the filing of the amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary