

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

August 9, 2016 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.

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|----|---------------------------------------|------------------------|--------------------------------------|
| 1. | <u>16-24001</u> -D-13 | ARMANDO/LINDA MARTINEZ | MOTION TO VALUE COLLATERAL OF |
| | JWS-1 | | WELLS FARGO BANK, N.A. |
| | | | 6-30-16 [<u>8</u>] |

Final ruling:

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

Tentative ruling:

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. The hearing has been continued twice to permit the debtor to respond, which her attorney has now done by way of his own declaration. The declaration raises a significant concern.

The trustee objected on the grounds that the debtor was delinquent in her plan payments and that her Schedule I included a deduction of \$184.17 per month labeled "Unspecified Deduction," and the debtor had testified at the § 341 meeting she did not know what this deduction was. As a result, the trustee concluded, the plan was not proposed in good faith.

The debtor's counsel has now filed a declaration in which he testifies that the debtor filed a chapter 13 in 2011 at a time when his office was using EZ-Filing, that his office moved from EZ-Filing to BestCase software between the time that case was dismissed (in 2014) and the time this case was filed (in April of this year), and that "when the file was imported to the new software, some information from Schedule I was transferred incorrectly." Macaluso Decl., DN 58, at 1:27-28. He adds: "To ensure accuracy on the most recently filed Schedules I & J (filed July 8, 2016, Dckt 53), I have deleted and reentered the Debtor's income and expense information. The Amended Schedules I & J are now true, correct and without error." Id. at 2:1-4.

This explanation (1) overlooks the debtor's duty to be sure schedules are correct before signing them;¹ and (2) appears to be inaccurate. The debtor has filed three Schedules I in this case - none of them bears any relation to the Schedule I filed in her 2011 case. In 2011, she listed her income as \$5,000 from operation of a business. There were no other numbers on her Schedule I in the prior case. In the present case, the debtor originally listed \$600 in rental income and \$1,294 net from a "2nd job," which actually appeared to be her only job, as she listed \$0 in wage income. (And unlike in her 2011 case, she listed no income from the operation of a business.) None of the information on the original Schedule I in this case (or the subsequent ones) appears to derive in any way from the Schedule I in the 2011 case. Thus, counsel's explanation that the BestCase software had incorrectly transferred information from the 2011 case does not make sense.

As indicated, the trustee objected to confirmation on the basis that the debtor could not explain the \$184 "unspecified deduction" on her Schedule I. (In fact, on her original Schedule I in this case, she listed a \$170 "unspecified deduction," and by the time the objection was filed, she had filed an amended Schedule I on which she increased the "unspecified deduction" to \$184.17. These facts strongly suggest the "unspecified deduction" was scheduled deliberately, rather than as an inadvertent carryover from the earlier case.) The debtor has now, finally, filed what her counsel claims are schedules that are true, correct, and without error. The unspecified deduction has been omitted and other changes have been made to Schedule I, which have resulted in an increase of \$331 in the debtor's net income. In addition, however, the debtor also filed a second amended Schedule J in which she more than doubled the amount of her food budget from the first amended schedule, filed just two months earlier which, in turn, had increased the food budget by \$100

from the original Schedule J in this case. She also added a \$130 child care expense. Overall, the changes to Schedule J have increased the debtor's household expenses by a total of \$605, thereby more than offsetting the increased income resulting from deleting the unspecified deduction.

It may be that the expenses listed on the debtor's most recent Schedule J are reasonable for her household. (She is supporting, in addition to a 15-year old daughter, a 20-year old daughter and 2-year old grandson; her 20-year old daughter apparently contributes nothing to the household expenses.) However, when changes of that magnitude are made without explanation, the court has every reason to conclude they were made for the purpose of offsetting other changes necessitated by objections raised by the trustee. And when counsel files a sworn declaration purporting to attribute the changes to his office's software, with an explanation that simply does not hold up on examination, and in fact, appears to be fabricated, he raises even more questions and concerns that do not reflect favorably on the debtor.

As a result of the debtor's failure to explain the changes made to her schedules in response to the trustee's objection, the court cannot conclude she has met her burden of demonstrating the plan was proposed in good faith, and the motion will be denied. The court will hear the matter.

1 See Hickman v. Hana (In re Hickman), 384 B.R. 832, 841 (9th Cir. BAP 2008), citing Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 417 (9th Cir. BAP 2007) [debtor has a duty "to prepare the bankruptcy schedules and statements 'carefully, completely, and accurately . . . '"].

3. [15-28535](#)-D-13 REGINALD/ANDREA SWAN MOTION TO MODIFY PLAN
MC-1 7-1-16 [[57](#)]

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.

4. [16-23241](#)-D-13 RAYMOND HETZLER OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
6-30-16 [[27](#)]

Final ruling:

This case was dismissed on July 27, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

5. [16-22943](#)-D-13 FALEMEI FINAU
RDG-3

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
6-27-16 [[37](#)]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. In response, the debtor contends he has filed an amended Schedule C that addresses the objection. However, the amended Schedule C is not filed under cover of an amendment cover sheet (EDC Form 2-015) and is not otherwise verified, as required by Fed. R. Bankr. P. 1008. As a result, the amended Schedule C is without effect. The court agrees with the trustee that the debtor's failure to list the dollar amounts of the debtor's various exemption claims renders it impossible to assess whether the exemptions are properly claimed. Accordingly, the court will sustain the trustee's objection by minute order. No appearance is necessary.

6. [16-21452](#)-D-13 MARIO ORTIZ
NFG-1

MOTION TO CONFIRM PLAN
6-15-16 [[48](#)]

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 the plan with the motion. The plan was served by itself on April 29, 2016, and was not served with the motion, notice of hearing, and declaration, which were served on June 15, 2016. The local rule provides that the debtor shall file and serve the plan "together with a motion to confirm it" (LBR 3015-1(d)(1)); it does not provide for piecemeal service. Further, the moving party failed to serve the only creditor that has filed a claim in this case.

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

7. [16-23053](#)-D-13 STEVEN BECKER
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
6-27-16 [[25](#)]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The debtor has not filed a response. The court agrees with the trustee that the debtor's failure to list the dollar amounts of the debtor's various exemption claims renders it impossible to assess whether the exemptions are properly claimed. Accordingly, the court will issue a minute order sustaining the trustee's objection.

No appearance is necessary.

8. [14-24666](#)-D-13 JEFFREY/LESLEE COEN MOTION TO MODIFY PLAN
MSN-1 6-27-16 [[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.

9. [15-20069](#)-D-13 SILHADI ALAMI MOTION TO INCUR DEBT
MSM-2 6-30-16 [[44](#)]

Tentative ruling:

This is the debtor's motion to incur debt for the purpose of a loan modification. The motion will be denied because the "attached" list referred to in the proof of service is not attached. Thus, the court cannot determine who was served and at what addresses.

As a result of this service defect, the motion will be denied by minute order, or alternatively, the hearing will be continued to allow for the moving party to file a corrected proof of service. The court will hear the matter.

10. [16-22269](#)-D-13 MIGUEL BERROJALBIZ MOTION TO VALUE COLLATERAL OF
DVD-4 URIARITE CLC CONSUMER SERVICES CO
6-29-16 [[46](#)]

Final ruling:

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

11. [16-22269](#)-D-13 MIGUEL BERROJALBIZ MOTION TO VALUE COLLATERAL OF
DVD-5 URIARITE CLC CONSUMER SERVICES CO
6-29-16 [[42](#)]

Final ruling:

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

12. [16-22084](#)-D-13 RICHARD TORREZ AND MONICA CONTINUED MOTION TO VALUE
WW-1 TORRZ COLLATERAL OF J.P. MORGAN CHASE
BANK, N.A.
5-24-16 [[25](#)]

13. [15-26188](#)-D-13 MAEHELLENA HARLAN MOTION TO MODIFY PLAN AND/OR
CRG-2 MOTION TO EXTEND TIME
6-3-16 [[29](#)]

Final ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve the creditor that filed Claim Nos. 4, 5, 6, and 7 at the address on its proofs of claim, as required by Fed. R. Bankr. P. 2002(g); and (2) the moving party failed to file the plan as a stand-alone document, as required by LBR 3015-1(d)(2).

For the reasons stated, the motion will be denied and the court need not reach the other issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

14. [16-23093](#)-D-13 TIMOTHY HARING OBJECTION TO DEBTOR'S CLAIM OF
RDG-1 EXEMPTIONS
6-27-16 [[20](#)]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. On July 12, 2016, the debtor filed an amended Schedule C. As a result of the filing of the amended Schedule C, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

15. [16-20497](#)-D-13 MARY WARD MOTION TO CONFIRM PLAN
BSH-1 6-16-16 [[53](#)]

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.

16. [16-23400](#)-D-13 DIANE VALLES OBJECTION TO CONFIRMATION OF
ETL-1 PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
7-19-16 [[16](#)]

17. [16-23302](#)-D-13 THOMAS PETERSON OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
7-18-16 [[18](#)]

18. [16-24704](#)-D-13 HAI PHAM AND TINA TRAN MOTION FOR TEMPORARY WAIVER OF
THE CREDIT COUNSELING
REQUIREMENT
7-19-16 [[5](#)]

Final ruling:

This case was dismissed on August 1, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

19. [16-23241](#)-D-13 RAYMOND HETZLER OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
7-18-16 [[37](#)]

Final ruling:

This case was dismissed on July 27, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

20. [11-34058](#)-D-13 PATRICIA WILBUR MOTION TO VALUE COLLATERAL OF
CJY-1 WELLS FARGO BANK, N.A.
7-22-16 [[58](#)]

21. [11-33778](#)-D-13 TIMOTHY/CHLOE HAMM MOTION TO VALUE COLLATERAL OF
CJY-1 BANK OF AMERICA, N.A.
7-22-16 [[62](#)]

22. [14-91069](#)-D-13 CHRISTOPHER/ANGELA MOTION TO CONTINUE HEARING ,
RLF-3 MAYFIELD MOTION TO EXTEND TIME AND/OR
MOTION TO SUBSTITUTE ATTORNEY
O. S. T.
8-8-16 [[61](#)]

