

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

August 12, 2014 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.	13-22206-D-13	JANINE SUTTI	CONTINUED MOTION TO MODIFY PLAN
	WW-2		5-6-14 [43]

2.	14-22411-D-13	KENNETH SERRANO	MOTION TO MODIFY PLAN
	PGM-2		6-24-14 [52]

**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.

3. 09-30315-D-13 ALBERT/BEVERLY ADAMO MOTION TO ALLOW FURTHER  
CLH-1 ADMINISTRATION OF THE CASE  
7-2-14 [59]

**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 allow further administration of the case is supported by the record. As such the court will grant the motion to allow further administration of the case. Moving party is to submit an appropriate order. No appearance is necessary.

4. 09-30315-D-13 ALBERT/BEVERLY ADAMO MOTION TO MODIFY PLAN  
CLH-2 7-2-14 [63]

**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. 11-29115-D-13 ANTONINO/TONIA AGBAYANI MOTION TO MODIFY PLAN  
CJY-1 7-8-14 [34]

**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.

6. 14-21815-D-13 JARNAIL KANG MOTION TO CONFIRM PLAN  
CLH-5 6-17-14 [54]

**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.

7. 14-25418-D-13 MICHAEL BONNER  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
7-11-14 [16]

8. 14-23019-D-13 LARRY/CHRISTINE BROOKS  
SDM-1

MOTION TO CONFIRM PLAN  
6-20-14 [27]

**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.

9. 12-32421-D-13 TIMOTHY/TAMERA ARAGON  
KAZ-1  
BANK OF NEW YORK MELLON VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-9-14 [56]

**Final ruling:**

In the debtors' confirmed plan this creditor is scheduled as Class 4 - to be paid outside the plan. Therefore, the motion is unnecessary as the plan explicitly provides: "Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of its loan or security documentation provided this case is pending under chapter 13." The court will deny the motion as unnecessary by minute order. No appearance is necessary.

10. 14-25423-D-13 PATRICIA FRENCH  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
7-11-14 [16]

11. 14-20926-D-13 LEROY JOHNSON  
JCK-3

AMENDED MOTION TO CONFIRM PLAN  
6-19-14 [54]

12. 14-25426-D-13 SINNATHA KEOMANIVONG  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
7-11-14 [24]

**Final ruling:**

**This case was dismissed on July 25, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.**

13. 14-24032-D-13 RICHARD/SHON ELSON  
RDG-2

OBJECTION TO DEBTORS' CLAIM OF  
EXEMPTIONS  
6-27-14 [25]

**Final ruling:**

**The matter is resolved without oral argument. The court's record indicates that no timely opposition/response has been filed. The objection is supported by the record. The court will sustain the trustee's objection to the debtors' claim of exemption. Moving party is to submit an appropriate order. No appearance is necessary.**

14. 12-42133-D-13 SCOTT EURE  
JCK-1

MOTION TO MODIFY PLAN  
6-19-14 [20]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the motion of alleged party-in-interest Belinda Smith ("Smith") for a declaration that PNC Bank, N.A. (the "Bank") committed fraud upon this court. The Bank has filed opposition. For the following reason, the motion will be denied.

On April 15, 2014, this court issued an order confirming that no automatic stay came into effect in this case at any time. The debtor, Jacob Winding ("Winding"), filed a motion for reconsideration, which was denied as moot because the case had by then been dismissed. Winding then filed a notice of appeal from the order, and a motion in this court for a stay pending appeal, which was denied. In the same notice of appeal, Winding appealed from two other orders of this court. On July 17, 2014, the Ninth Circuit Bankruptcy Appellate Panel issued an order in which it concluded that, as to the April 15, 2014 order and another of the orders appealed from, the debtor's notice of appeal was untimely. Thus, the Panel ordered that its review would be limited to a review of the third of the orders appealed from.

In the present motion, Smith alleges that the Bank and its "attorneys[], agents, and supporting entities"<sup>1</sup> lied to the court and to Winding in its motion for an order determining that no stay came into effect. In particular, Smith claims the following statement in the Bank's memorandum of points and authorities constituted a fraud upon the court: "It was not until March 20, 2014, that Debtor [Winding] advised PNC Bank or its counsel of the existence of the [bankruptcy] case." Mem. in DC No. HRH-2, filed April 1, 2014, at 1:18-19. According to Smith, the truth was that Winding informed the Bank twice, by letter on January 25, 2014 and by phone on January 31, 2014, that he was in bankruptcy. In reliance on the Bank's alleged lie, Smith contends, this court issued its April 15, 2014 order, thereby "removing debtor Jacob Winding's automatic stay." Mot. at 3:9. <sup>2</sup>

In her declaration supporting the motion, Smith explains that she is a litigant in a district court case entitled PNC Bank vs. Belinda Smith and Jacob Winding; she also claims she is a party-in-interest in this bankruptcy case. Other than stating that bare conclusion, however, Smith provides nothing to support the proposition that she is or was a party-in-interest in this bankruptcy case. Her name does not appear in Winding's schedules, list of creditors, or statement of financial affairs, and so far as the record reveals, Smith played no role whatsoever in this case. Even if she had, however, the court has no basis on which to conclude that she was in any way injured by the April 15, 2014 order for the simple reason that, as a general proposition, the automatic stay protects only the debtor in a bankruptcy case, whereas Smith was not the debtor in this case. "In the absence of special circumstances, stays pursuant to section 362(a) are limited to debtors and do not include non-bankrupt co-defendants." Ingersoll-Rand Financial Corp. v. Miller Mining Co., 817 F.2d 1424, 1427 (9th Cir. 1987).

Thus, Smith had and has no legally protected interest that was impaired as a result of the April 15, 2014 order, and therefore, she has no standing to be heard concerning the circumstances leading to the order.

The test for standing appears in the familiar language of Lujan v. Defenders of Wildlife, requiring a party to show three things: "First, [it] must have suffered an injury in fact-an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of . . . Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."

Coto Settlement v. Eisenberg, 593 F.3d 1031, 1036 (9th Cir. 2010), quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).

The motion will be denied for lack of standing; thus, the court need not address the procedural defects in the moving papers. The motion will be denied by minute order. No appearance is necessary.

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1 Mot., DC No. BS-1, filed July 11, 2014, at 2:5.

2 Smith's conclusion that Winding's automatic stay was "removed" is inaccurate. It is clear from the record in this and his three prior cases filed in this court that no automatic stay ever came into effect in this case. Thus, there was never any automatic stay to "remove."

16. 13-35436-D-13 CHARLES/LARA GLIEBE  
LRR-4

MOTION TO CONFIRM PLAN  
6-26-14 [59]

17. 14-25338-D-13 ERNESTO BUENAVISTA  
ASW-1

OBJECTION TO CONFIRMATION OF  
PLAN BY BANK OF NEW YORK MELLON  
7-16-14 [22]

18. 14-24140-D-13 JESUS/AMY SALES  
SJS-1

OBJECTION TO CLAIM OF BAYSAVERS  
VEHICLE, INC., CLAIM NUMBER 1  
7-10-14 [23]

**Final ruling:**

This is the debtors' objection to the claim of Baysavers Vehicle, Inc. The objection will be overruled because the moving parties gave only 33 days' notice of the hearing rather than 44 days', as required by LBR 3007-1(b) (1) for notices such as this one, purporting to require written opposition.

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

19. 14-20141-D-13 JUAN/ELIZABETH MENDEZ  
LR-4

MOTION TO CONFIRM PLAN  
5-22-14 [73]

20. 11-45142-D-13 ELIZABETH LAJOS  
JBR-10

MOTION TO MODIFY PLAN  
6-10-14 [140]

**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.

21. 14-23842-D-13 ANGELA WARREN-BASS  
JCK-3

MOTION TO CONFIRM PLAN  
6-20-14 [42]

22. 14-22348-D-13 LISA PINA  
ALF-2

MOTION TO VALUE COLLATERAL OF  
CITI FINANCIAL, INC.  
7-9-14 [38]

**Final ruling:**

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

23. 14-23548-D-13 CARL/BETTIE ALLEN  
HWW-1

MOTION TO CONFIRM PLAN  
6-13-14 [19]

**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. 12-36750-D-13 CHARLES/JULIANNE RUIZ  
JAD-4

MOTION TO MODIFY PLAN  
6-23-14 [85]

**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.

25. 13-32850-D-13 FAY/A POLLINO  
PGM-1

MOTION TO MODIFY PLAN  
6-30-14 [34]

**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.



26. 14-25352-D-13 RAMON BARRAGAN  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
7-11-14 [24]

27. 12-31559-D-13 ANDRE/SANDRA DE VOS  
DMR-2

MOTION TO MODIFY PLAN  
7-2-14 [71]

**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.

28. 14-25359-D-13 LILLIAN GLEASON  
BHT-1

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK, N.A.  
7-2-14 [27]

29. 11-31064-D-13 DAVID REID AND TRACEY  
RLB-6 BRADSHAW

MOTION TO MODIFY PLAN  
6-28-14 [121]

**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.

30. 12-36066-D-13 MATTHEW/ANDREA MOTION TO MODIFY PLAN  
JAD-4 SCHWERTFEGER 7-9-14 [65]

**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.

31. 14-25073-D-13 JOSE HERNANDEZ OBJECTION TO DEBTOR'S CLAIM OF  
RDG-3 EXEMPTIONS  
6-27-14 [28]

**Final ruling:**

This is the trustee's objection to the debtor's claim of exemptions. The trustee objected on the ground that the debtor had failed to file a spousal waiver to allow him to use the exemptions of Cal. Code Civ. Proc. § 703.140(b). On July 11, 2014, the debtor filed a spousal waiver signed by the debtor and his spouse. As a result of the filing of the spousal waiver, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

32. 13-29580-D-13 VINCENT/VIRGINIA ALCARIA MOTION TO MODIFY PLAN  
TBK-3 7-8-14 [42]

**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.

33. 13-30483-D-13 GARY/SHARON SPARKS MOTION TO CONFIRM PLAN  
TOG-6 6-24-14 [180]

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The court agrees with the trustee - the motion should be denied because the amended plan filed with the court is incomplete - it is missing page 2. The motion will be denied by minute order. No appearance is necessary.

34. 12-28185-D-13 ANTOINETTA TREISS  
ICE-1

MOTION FOR COMPENSATION FOR  
IRMA EDMONDS, CHAPTER 7  
TRUSTEE(S)  
6-30-14 [103]

**Final ruling:**

This is the motion of the former chapter 7 trustee in this case for an award of compensation. The motion will be denied for the following reasons: (1) the moving party served only the debtor, the debtor's attorney (at an incorrect address), the chapter 13 trustee, and the United States Trustee, and thus, failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(6); (2) the moving party failed to serve the debtor's attorney at his current address of record; and (3) the proof of service does not adequately evidence service. It states that service was made by "depositing [the envelopes] into an inter-office delivery receptacle, or . . . in the United States Post Office mailbox . . . ." Evidence that the envelopes were deposited in an inter-office delivery receptacle does not constitute evidence the documents were actually served by mail (or at all).

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

35. 10-47886-D-13 LINDA/DANIEL DIAZ  
MSM-3

OBJECTION TO CLAIM OF GE MONEY  
BANK, CLAIM NUMBER 14  
7-7-14 [39]

36. 13-35390-D-13 PAUL/KIMBERLY CAVA  
ALB-5

CONTINUED MOTION TO CONFIRM  
PLAN  
5-23-14 [87]

**Final ruling:**

The plan that is the subject of this motion was confirmed by order entered July 28, 2014. As a result this matter is removed from calendar as moot. No appearance is necessary.

37. 14-25290-D-13 CHRISTIAN DAPAAH  
KAZ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY FIRST MORTGAGE  
CORPORATION  
7-15-14 [28]

**Final ruling:**

This case was dismissed on July 25, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

38. 14-25290-D-13 CHRISTIAN DAPAAH  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
7-11-14 [25]

**Final ruling:**

**This case was dismissed on July 25, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.**

39. 14-24994-D-13 LEAH CLEVELAND  
CSL-2

MOTION TO VALUE COLLATERAL OF E  
TRADE BANK  
7-10-14 [23]

**Final ruling:**

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

40. 14-20996-D-13 FRANCISCO/MARIA PADILLA  
PP-1  
NORTHEAST BANK VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
6-30-14 [32]

41. 14-25397-D-13 LYNN TOY  
CLH-1

OBJECTION TO CONFIRMATION OF  
PLAN BY HAKEEM, ELLIS AND  
MARENGO  
7-11-14 [18]

42. 14-25397-D-13 LYNN TOY  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
7-11-14 [21]

43. 12-29798-D-13 ERIC/EMMARI CALAYAN  
TBK-6

MOTION TO VALUE COLLATERAL OF  
JPMORGAN BANK, N.A.  
7-29-14 [88]

44. 12-29798-D-13 ERIC/EMMARI CALAYAN  
TBK-7

OBJECTION TO CLAIM OF JPMORGAN  
CHASE BANK, NA, CLAIM NUMBER 14  
7-29-14 [93]

**Final ruling:**

**This is the debtors' objection to the claim of JPMorgan Chase Bank (the "Bank"). The objection will be overruled for the following reasons: (1) the moving parties gave only 14 days' notice of the hearing rather than 30 days', as required by LBR 3007-1(b)(2) for notices such as this one, not requiring written opposition; and (2) the moving parties failed to serve the Bank at the address on its proof of claim, as required by LBR 3007-1(c).**

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

45. 14-25008-D-13 NHAT NGUYEN  
RDG-2

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
6-27-14 [38]

46.	14-25008-D-13 JTN-1	NHAT NGUYEN	CONTINUED MOTION TO VALUE COLLATERAL OF OCWEN LOAN SERVICING, LLC 6-4-14 [13]
47.	14-25008-D-13 BHT-1	NHAT NGUYEN	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION 7-1-14 [43]
48.	14-24032-D-13 RAC-1	RICHARD/SHON ELSON	CONTINUED MOTION TO CONFIRM PLAN 6-12-14 [15]
49.	10-33270-D-13 CA-3	OSCAR/ANITA CATBAGAN	CONTINUED MOTION TO INCUR DEBT 7-8-14 [51]

50. 12-37670-D-13 KEN BROWN  
HWW-6

MOTION TO SELL  
7-28-14 [53]