

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil

Bankruptcy Judge

Modesto, California

August 30, 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.

1.	16-90303-D-13	JEFFREY AUSTIN	MOTION TO VALUE COLLATERAL OF
	MSN-1		INTERNAL REVENUE SERVICE
			7-5-16 [28]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

2. 16-90303-D-13 JEFFREY AUSTIN
MSN-2

MOTION TO CONFIRM PLAN
7-5-16 [33]

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.

3. 15-90609-D-13 KIMBERLY MIRANDA
CJY-1

MOTION TO MODIFY PLAN
7-25-16 [28]

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. 13-91612-D-13 DEBRA MCCONNICO
MSN-4

MOTION TO AVOID LIEN OF LVNV
FUNDING, LLC
7-12-16 [68]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

5. 16-90512-D-13 MITCHEL/DAWN FRIDAY
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-1-16 [20]

6. 12-90416-D-13 JEFFREY/NANCY REYNOLDS
CJY-3

MOTION TO MODIFY PLAN
7-14-16 [56]

7. 15-91217-D-13 HEATH/TIFFANY GRIGSBY
JWS-1

MOTION TO VALUE COLLATERAL OF
WARREN FEDERAL CREDIT UNION
7-21-16 [43]

Final ruling:

This is the debtors' motion to value collateral of Warren Federal Credit Union. The motion will be denied because the moving parties failed to serve the Credit Union in strict compliance with Fed. R. Bankr. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Credit Union (1) at a street address with no attention line; and (2) at a post office box address to the attention of "Bankruptcy Department." The first method was insufficient because a corporation, partnership, or other unincorporated association must be served to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there was no attention line. The second method was insufficient because a corporation, partnership, or other unincorporated association must be served to the attention of an officer, managing or general agent, or agent for service of process, not a bankruptcy or other department. Further, in the text above the name and address listings, the proof of service states in bold type: "In accordance with Bankruptcy Rule 7004(h) service of process was made by certified mail to an officer of the institution as identified below." Thus, it appears the Credit Union was served by certified mail, whereas service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, such as the Credit Union, must be by first-class mail. Fed. R. Bankr. P. 7004(b)(3).

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

8. 16-90120-D-13 DONNA FUHRER
SJS-3

MOTION TO CONFIRM PLAN
7-12-16 [39]

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 all creditors, as required by Fed. R. Bankr. P. 2002(b). The debtor's earlier motion to confirm an amended plan was denied for the same reason. The ruling pointed out that the moving party filed her schedules of creditors one month into the case (pursuant to an order extending time), and when she did, she failed to file an amended master address list. As a result, when the debtor utilized the PACER matrix for service of that motion, she failed to serve Santander Consumer USA, which had been listed on Schedule D as the holder of the second deed of trust against the debtor's residence, at all.

Since that motion was denied, the debtor has filed an amended Schedule D on which she lists Santander Consumer USA as secured by a lien on the debtor's vehicle, not a deed of trust on her residence. This time, the debtor did file an amended master address list. However, by the time she served this motion, the very next day, the PACER matrix had not yet been updated by the clerk's office. As a result, when the debtor served the motion on creditors listed on the PACER matrix, she again failed to serve Santander Consumer USA.

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

9. 16-90520-D-13 ARTIE RAZO
APN-1

OBJECTION TO CONFIRMATION OF
PLAN BY SANTANDER CONSUMER USA,
INC.
8-1-16 [23]

10. 11-92534-D-13 JOSE NILA AND GLENDA
CJY-3 GUZMAN

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK
8-3-16 [85]

11. 16-90438-D-13 DANIEL MCCracken
BSH-2

MOTION TO CONFIRM PLAN
7-15-16 [26]

12. 13-91750-D-13 CHRISTY BENAFIELD
SL-3

MOTION TO MODIFY PLAN
7-7-16 [56]

Final ruling:

This is the debtor's motion to confirm a second modified chapter 13 plan. On August 11, 2016, the debtor filed a Notice to Withdraw Hearing on Second Modified Plan and Withdrawal of Second Modified Plan. The purported withdrawal was ineffective. Because opposition had been filed, the debtor did not have the right to unilaterally withdraw the motion. Fed. R. Civ. P. 41(a), incorporated herein by Fed. R. Bankr. P. 7041. The court deduces from the purported withdrawal, however, that the debtor does not wish to contest the trustee's opposition to the motion. As a result, the motion will be denied by minute order. No appearance is necessary.

13. 16-90265-D-13 ORLANDO LUNA
NFG-1

MOTION TO CONFIRM PLAN
7-8-16 [34]

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 failed to serve either of the parties who have filed requests for special notice in this case at their designated addresses, as required by Fed. R. Bankr. P. 2002(g); and (2) the moving party failed to serve the plan with the motion. The plan was served by itself on May 27, 2016, and was not served with the motion, notice of hearing, and declaration, which were served on July 7, 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.

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

14. 14-91367-D-13 LESTER/SUSAN LIGHTHALL
MSN-1

MOTION TO MODIFY PLAN
7-13-16 [21]

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.

15. 11-92070-D-13 AVON/BERNARDINE CONAWAY AMENDED MOTION TO SUBSTITUTE,
JBR-1 AVON CORNELIUS CONAWAY, SR.,
FOR BERNARDINE LILLIAN CONAWAY
AS SUCCESSOR-IN-INTEREST ,
AMENDED MOTION TO WAIVE 11
U.S.C. 1328 REQUIREMENT FOR
BERNARDINE LILLIAN CONAWAY
8-2-16 [69]

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 amended motion to substitute, Avon Cornelious Conaway, Sr., for Bernardine Lillian Conaway as successor-in-interest and amended motion to waive 11 U.S.C. 1328 requirement for Bernardine Lillian Conaway is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

16. 16-90572-D-13 LUCY GUERRERO MOTION FOR RELIEF FROM
ADR-1 AUTOMATIC STAY AND/OR MOTION
CALNEV INVESTMENTS, INC. VS. FOR ADEQUATE PROTECTION
7-29-16 [18]

17. 11-93274-D-13 FRANK/LISA PEACOCK MOTION TO MODIFY PLAN
SDM-2 7-15-16 [57]

18. 16-90075-D-13 DANIEL JAMES AND PAULA MOTION TO CONFIRM PLAN
EAT-5 FOX-JAMES 7-19-16 [84]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because (1) with one exception, the moving parties failed to serve the creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); and (2) the moving parties failed to serve Chase Card, listed on their Schedule E/F, at all.

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

19. 15-90181-D-13 STANLEY/ROSEMARIE JONES MOTION TO MODIFY PLAN
DCJ-3 7-19-16 [56]

20. 16-90288-D-13 KAL/DEBORAH KIRKLE MOTION TO CONFIRM PLAN
DCJ-3 7-19-16 [37]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the plan proposes to pay the \$295,122 claim of Wallace Miller, secured by liens against five parcels and 48 rental units owned by the debtors, a total of \$88,000 based on the value of the creditor's collateral, whereas the moving parties have failed to file a motion to value that collateral, as required by LBR 3015-1(j).

For this reason, 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.

21. 16-90492-D-13 MARSHALL/DONNA ALMANZA OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
8-1-16 [12]

22. 11-92016-D-13 DALTON/ADELE GOLDSBERRY MOTION TO VALUE COLLATERAL OF
CJY-1 SELECT PORTFOLIO SERVICING,
INC.
8-10-16 [37]

23. 16-90520-D-13 ARTIE RAZO
DCJ-1

CONTINUED MOTION TO VALUE
COLLATERAL OF CHRYSLER CREDIT
7-28-16 [18]

24. 11-91666-D-13 MONTEZ GRUNDY AND TRACY
CJY-2 WHITE-GRUNDY

MOTION TO VALUE COLLATERAL OF
JP MORTGAGE CHASE
8-5-16 [126]

25. 14-91069-D-13 CHRISTOPHER/ANGELA
RDG-4 MAYFIELD

MOTION TO EMPLOY CHARLES S.
STONER AS SPECIAL COUNSEL
AND/OR MOTION FOR COMPENSATION
FOR CHARLES S. STONER, SPECIAL
COUNSEL(S)
8-12-16 [69]

Tentative ruling:

This is the application of joint debtor Angela Mayfield 1 to approve nunc pro tunc the employment of attorney Charles S. Stoner to represent the joint debtor during the period February 10, 2015 through January of 2016 and to approve compensation to Mr. Stoner.

The application indicates Mr. Stoner represented the joint debtor in a state court action for wrongful termination and discrimination. The debtors scheduled the claims that were the subject of the state court action on their original Schedule B in this case and claimed the value, which they listed as "unknown," as exempt. The trustee's objection to the exemption was sustained. On May 23, 2016, after the lawsuit had settled, the debtors filed an amended Schedule B on which they listed the value of the claims at \$104,000, which the application states is the amount of the gross settlement proceeds. The amount of the fees the joint debtor seeks to pay Mr. Stoner is just under 20% of that amount, which is the percentage Mr. Stoner was to receive under the contingency fee agreement between him and the joint debtor, a copy of which is attached to the application. On an amended Schedule C, the debtors claimed the entire amount of the recovery, \$104,000, as exempt under various sections of the California Code of Civil Procedure. The trustee's objection to that claim of exemption is presently set for continued hearing on September 27, 2016.

The application states it is brought pursuant to § 330 of the Bankruptcy Code; it also refers to § 327(e). Those sections govern, respectively, the compensation of professionals and the employment of special counsel; both pertain to professionals employed by bankruptcy trustees and, by way of § 1107(a), chapter 11 debtors-in-possession. Sections 330 and 327(e) are not applicable to attorneys employed by debtors in chapter 13 cases. This does not mean chapter 13 debtors are precluded from prosecuting claims such as the ones the joint debtor prosecuted in the state court action or from engaging counsel to represent them.

However, the determination of whether and to what extent the joint debtor's counsel in the state court action should be paid from the settlement proceeds will depend in large part on the outcome of the trustee's objection to the debtors' claim of exemption. If the trustee's objection is overruled, the settlement proceeds will be the debtors' property, not the estate's property, and the debtors will be free to pay Mr. Stoner without this court's approval. On the other hand, if the trustee's objection is sustained, the proceeds will be property of the estate, not the debtors, and the court will look to the trustee for his input on any subsequent request to pay Mr. Stoner.

For the reasons stated, the court intends to deny the application without prejudice. In the event the trustee's objection to exemption is sustained, the trustee, the debtors, or the joint debtor may file an application to pay Mr. Stoner. The court cautions the joint debtor that if she files a subsequent application, she must serve not only the trustee and the United States Trustee, as she did here, but also the debtor and all creditors. Further, the notice of hearing on any subsequent application must comply with the appropriate subsection of LBR 9014-1(f). (The notice of hearing of this application purported to require the filing of written opposition 14 days prior to the hearing date, but it was served just 15 days prior to the hearing date.) The court will hear the matter.

1 The debtors are presently representing themselves in this case in pro se. The application is signed only by the joint debtor, who is not permitted to appear for her spouse, the debtor. LBR 1001-1(c), incorporating Local District Court Rule 183(a). Thus, the application is brought by the joint debtor only, and not the debtor.