

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

September 4, 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.	18-23903-D-13	LARRY SWANSON	OBJECTION TO CONFIRMATION OF
	NLL-1		PLAN BY U.S. BANK, N.A.
			7-31-18 [15]

Final ruling:

This is the objection of U.S. Bank National Association, filed July 31, 2018, to confirmation of the debtor's proposed chapter 13 plan. On August 22, 2018, the debtor 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.

2. 13-23405-D-13 JOSEPH/SARA THOMAS
HLG-2

MOTION TO AVOID LIEN OF
DISCOVER BANK
7-30-18 [106]

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 debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

3. 18-23708-D-13 STANLEY ASBURY AND
GSJ-2 KATHRINE STEWART ASBURY

MOTION TO VALUE COLLATERAL OF
REAL TIME RESOLUTIONS
8-2-18 [25]

Final ruling:

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

4. 18-21014-D-13 KAREN MORAN
RDG-1

OBJECTION TO CLAIM OF ACAR
LEASING LTD, CLAIM NUMBER 11
7-25-18 [17]

5. 18-23522-D-13 CLAUDIA ROCHA
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
7-20-18 [27]

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 August 14, 2018, the debtor filed a spousal waiver that appears to be signed by the debtor 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.

6.	18-21534-D-13	HECTOR/MARIA PEREZ	MOTION TO CONFIRM PLAN
	BSH-1		7-23-18 [32]

7.	16-22336-D-13	LARRY/MICHELLE OLIVAN	MOTION TO MODIFY PLAN
	JWS-1		7-23-18 [39]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

8.	18-21040-D-13	RAYFORD GRIFFIN	MOTION TO CONFIRM PLAN
	BSH-2		7-23-18 [26]

9.	18-22741-D-13	MICHAEL/ORINA WHITE	MOTION TO CONFIRM PLAN
	RKW-2		7-26-18 [39]

10. 18-24646-D-13 STEVEN/JILL WICK
JCK-1

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA
7-31-18 [8]

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.

11. 18-22949-D-13 GEORGE MOSQUEDA
GMW-1

MOTION TO CONFIRM PLAN
7-16-18 [32]

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.

12. 13-32850-D-13 FAY/A POLLINO
PGM-5

MOTION TO MODIFY PLAN
7-23-18 [81]

13. 18-22250-D-13 RUSSELL/SHIRLEY SMITH
PPR-1
WILMINGTON SAVINGS FUND
SOCIETY, FSB VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
7-25-18 [43]

Tentative ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The trustee has filed opposition and the debtors have filed a reply. For the following reasons, the motion will be denied.

The trustee has raised four issues. It appears the first - that the plan does not include the secured claim of CalHFA, listed on the debtors' Schedule D, has been resolved by the debtors' discovery of a deed of reconveyance recorded in 2014, which states the reconveyance was recorded in consideration of full satisfaction of the debt. Therefore, there is no secured claim here that the court needs to value and no secured claim that needs to be listed in the debtors' plan.¹ The trustee's second objection, however - that the plan does not provide for the secured claim of the Bank of New York Mellon, listed on the debtors' Schedule D - remains viable. The debtors oppose this objection on the ground that the court has, since the trustee filed his opposition, granted their motion to value the Bank's collateral at \$0. However, although the court has issued an order valuing the collateral, the claim must nevertheless be listed in the plan as a Class 2 claim, whereas the claim does not appear in the debtors' plan at all.^{2 3}

The trustee's third and fourth objections are similar to each other: they are that the proposed plan payments are insufficient to pay the conduit and arrears payments to Shellpoint Mortgage, the trustee's compensation, and the attorney's fee payment until month 10 of the plan.⁴ The debtors have responded with a Monthly Payout Schedule prepared by their attorney. The problem with the payout schedule is that it does not reflect the payments required by the plan. Thus, for the first four months of the plan, the payout schedule includes no payment on Shellpoint's arrears claim, whereas the plan calls for payments on that claim, at \$1,058.95 per month, beginning in the first month of the plan and continuing monthly at that rate until paid. Under the debtors' payout schedule, the first payment on Shellpoint's arrears claim would be made in month 5, when the last attorney's fee payment will be made - at a lower amount than during the first four months.

Given that lower amount, the payout schedule shows a small payment toward Shellpoint's arrears claim in month 5 - \$154.20. Again, this is contrary to the plan, which requires monthly payments on the arrears claim at \$1,058.95 from the beginning. In months 6 through 9, the payout schedule allows for a payment of \$330.84 per month on the arrears claim whereas, again, the plan requires payments of \$1,058.95 per month. The payout schedule appears ultimately to result in full payment of the arrears claim by increasing the payment amount to an amount higher than the amount called for by the plan, beginning in month 10. Because the payout schedule would defer payments on Shellpoint's arrears claim beyond the schedule required by the plan, and because the plan payments in months 1 through 9 are insufficient to pay the amounts required by the plan, the plan cannot be confirmed as proposed and the motion will be denied.

The court will hear the matter.

1 The debtors have also filed an amended Schedule D on which they have removed

CalHFA.

- 2 The required form plan is explicit: "Class 2 claims that may be reduced based on the value of their collateral shall be included in Class 2(B) or 2(C) as is appropriate." EDC Form 3-080, sec. 3.08(c)(2).
- 3 The debtors have filed amended Schedules D and E/F, removing the Bank's claim from Schedule D and adding it to Schedule E/F. This was not appropriate. Creditors holding liens as of the commencement of the case are to be listed on Schedule D, along with the amount of the claim, the value of the collateral securing the claim, and the amount of the unsecured portion of the claim, if any, which may, as in this case, be the entire amount of the claim. Claims subject to valuation based on the value of the creditor's collateral are not unsecured claims as of the commencement of the case, and therefore, are not appropriately listed on Schedule E/F.
- 4 The plan payment changes in month 9, but the attorney's fee payments will be completed in month 5; thus, the trustee has raised two objections - one for the period including an attorney's fee payment and one for the period not including it. It is clear from the trustee's opposition that for the full nine months, the plan payment will be insufficient.

15.	18-22864-D-13	ANTHONY/SINDY CESARINI	MOTION TO CONFIRM PLAN
	PGM-1		7-18-18 [23]

16.	18-20365-D-13	RADHEY/LILLIAM SHYAM	MOTION TO CONFIRM PLAN
	EML-4		7-25-18 [87]

17. 18-23785-D-13 CHERYL CHAMBERLAIN
HWW-1

MOTION TO VALUE COLLATERAL OF
GOLDEN ONE CREDIT UNION
8-6-18 [18]

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.

18. 18-23786-D-13 SCOTT MAYO
HWW-1

MOTION TO CONFIRM PLAN
7-31-18 [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 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.

19. 18-23903-D-13 LARRY SWANSON
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-13-18 [19]

Final ruling:

This is the trustee's objection, filed August 13, 2018, to confirmation of the debtor's proposed chapter 13 plan. On August 22, 2018, the debtor 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.

20. 18-23708-D-13 STANLEY ASBURY AND
RDG-1 KATHRINE STEWART ASBURY

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-13-18 [29]

21.	18-23814-D-13 RDG-1	JOSE AGUILERA AND LETICIA ROMERO	OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE RUSSELL D. GREER 8-13-18 [17]
22.	18-22825-D-13 SSA-3	PIERRE CHAHOUD AND SUZAN AKHNANA	CONTINUED MOTION FOR ALLOWANCE OF FEES AND REIMBURSEMENT OF COSTS 7-25-18 [63]
23.	18-22241-D-13 RS-2	LEYNE FERNANDEZ	MOTION TO VALUE COLLATERAL OF TRINITY FINANCIAL SERVICES 8-20-18 [48]
24.	18-21661-D-13 HRH-1 BMO HARRIS BANK, N.A. VS.	GERARDO LARA AND NORMA CAMARENA	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-9-18 [57]

25. 18-22673-D-13 RONALD/MAFFIE DIOSO
MKM-2

CONTINUED MOTION TO AVOID LIEN
OF MIDLAND FUNDING, LLC
7-11-18 [28]

Final ruling:

The matter is resolved without oral argument. The court inadvertently did not include a ruling on this motion in its pre-hearing dispositions for the original hearing date, August 21, 2018. When the moving parties' attorney did not appear at that hearing, the court issued a minute order stating the hearing was continued to this date and if the moving parties did not appear at the continued hearing, the motion would be dismissed without further notice or hearing.

Notwithstanding that order, the court's records indicate that no timely opposition to the motion was 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 debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary. The court's minute order on the August 21, 2018 hearing will be vacated.

26. 18-23785-D-13 CHERYL CHAMBERLAIN
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-13-18 [23]

27. 18-23987-D-13 ASMAR ERVIN
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-13-18 [16]

28. 18-23696-D-13 JALEAIL NABIZADAH
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-13-18 [16]

Final ruling:

The debtor filed an amended plan on August 24, 2018, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

