

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

September 5, 2017 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.	16-90304-D-13	JOHN DEMING	MOTION TO CONFIRM PLAN
	DCJ-8		7-24-17 [187]

Tentative ruling:

This is the debtor's fourth motion to confirm a chapter 13 plan. The trustee has filed opposition. For the following reason, the motion will be denied.

This case was filed April 1, 2016, 17 months ago. Although the debtor's very first plan proposed to strip down two car loans, the debtor did not get around to filing his first motions to value until March 21, 2017, ten days short of a year after the case was filed. He filed his first two motions to confirm a plan on June 17 and August 30, 2016. The trustee opposed both motions on the ground the debtor had not obtained orders valuing the car claims. Both motions were denied by final ruling for that reason. The debtor then waited another four months, until February 15, 2017 before filing a third motion to confirm a plan. The trustee opposed that motion for the reason, again, that the debtor had failed to obtain orders valuing the car claims. On March 21, 2017, the debtor finally filed motions to value, which, after two continuances, were granted in part and the car claims

were valued at the amounts proposed by the creditor.

In the meantime, the trustee had also opposed the first three motions to confirm a plan - the motions filed June 17 and August 30, 2016 and February 15, 2017, on the additional grounds that the debtor had failed to provide a profit and loss statement for his new consulting business and had failed to file an amended Schedule I to reflect his current budget; thus, he had not demonstrated that the plan was feasible. Now, on this fourth motion to confirm, filed almost 16 months after the case was filed, the trustee has had to file opposition - for the fourth time - on the grounds of failure to produce the profit and loss statement and failure to file an amended Schedule I.

In these circumstances, the court agrees with the trustee that the plan is not proposed in good faith. It appears the case has been administered for the sole purpose of delaying creditors. There is a Conditional Order Re Dismissal in place requiring confirmation of a plan by September 25, 2017 or the trustee may submit an order dismissing the case. This is the fourth such order - the debtor having previously had deadlines of August 16, 2016 and February 7 and April 4, 2017 to confirm a plan or have the case dismissed. Given this ruling and given the amount of notice required for a new plan, it appears the debtor will not be able to obtain confirmation by September 25. It will be up to the trustee whether to submit a proposed order dismissing the case. It appears, however, that further delay would not generate production of the required documents or confirmation of a plan.

The court will hear the matter.

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|----|------------------------|---------------|--|
| 2. | 17-90504-D-13
AP-1 | WALTER PINEDA | OBJECTION TO CONFIRMATION OF
PLAN BY NATIONSTAR MORTGAGE,
LLC
8-4-17 [25] |
| | | | |
| 3. | 17-90504-D-13
RDG-3 | WALTER PINEDA | OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-7-17 [32] |

4.	16-90308-D-13	JESSICA DOWELL	MOTION FOR RELIEF FROM
	BDA-1		AUTOMATIC STAY
	CAPITAL ONE AUTO FINANCE VS.		8-10-17 [34]

Final ruling:

In the debtor's 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: "Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." The court will deny the motion as unnecessary by minute order. No appearance is necessary.

5.	17-90520-D-13	DENNIS/SONYA GILBREATH	OBJECTION TO CONFIRMATION OF
	RDG-2		PLAN BY RUSSELL D. GREER
			8-7-17 [19]

6.	17-90429-D-13	KELLY/DONNA FUHRER	MOTION TO VALUE COLLATERAL OF
	MSN-1		SANTANDER CONSUMER USA, INC.
			7-21-17 [22]

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.

7.	17-90429-D-13	KELLY/DONNA FUHRER	CONTINUED OBJECTION TO
	RDG-2		CONFIRMATION OF PLAN BY RUSSELL
			D. GREER
			7-10-17 [19]

8. 16-90731-D-13 WILLIAM/SHIRLEY BEDWELL CONTINUED MOTION TO MODIFY PLAN
MSN-1 6-12-17 [20]

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. 17-90437-D-13 JAIME/MARIA SANTANA MOTION TO CONFIRM PLAN
TOG-2 7-19-17 [23]

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.

10. 17-90438-D-13 KYLE FREITAS MOTION FOR RELIEF FROM
KKY-1 AUTOMATIC STAY
OPERATING ENGINEERS LOCAL 8-4-17 [33]
UNION #3 FEDERAL CREDIT
UNION VS.

Final ruling:

This matter is resolved without oral argument. This is Operating Engineers Local Union #4 Federal Credit Union'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.

11. 16-90645-D-13 TIMOTHY MARTIN
TGM-1
TOYOTA MOTOR CREDIT
CORPORATION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-31-17 [69]

12. 16-90946-D-13 DIANE HATTON
17-9004 EMM-1
HATTON V. VENTURES TRUST
2013-I-H-R BY MCM CAPITAL

CONTINUED MOTION TO DISMISS
ADVERSARY PROCEEDING
6-8-17 [14]

Tentative ruling:

This is the defendant's motion to dismiss the plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(6), incorporated herein by Fed. R. Bankr. P. 7012(b), for failure to state a claim upon which relief can be granted. The court issued a tentative ruling on the motion prior to the initial hearing date, heard oral argument on that date, and continued the hearing for the sole purpose of allowing the plaintiff to brief the precise issue addressed in the tentative ruling and at the hearing and to permit the defendant to reply. The court was quite specific about the continuance: the plaintiff was to present, if she could, controlling or persuasive case law that had not yet been cited on the particular notice issue addressed in the tentative ruling and discussed at the initial hearing.

Instead, the plaintiff used her supplemental brief to inform the court of a judgment issued by the Mariposa County Superior Court in the unlawful detainer proceeding between the parties. The judgment was issued by the state court on August 2, 2017, following a trial concluded on July 31, 2017, 20 days after the date of the initial hearing on the defendant's motion to dismiss this adversary proceeding.¹ Neither party apprised this court of the pending trial or of the fact that the same issue had been or was to be presented to both courts, virtually simultaneously.

The state court ruled in the plaintiff's favor for two reasons.² First, the court found that the defendant is not qualified to do business in the State of California, and therefore, California law barred the defendant from access to the California courts. Second, on the effect of this court's "in rem" relief from stay order in the plaintiff's husband's earlier chapter 13 case, the state court ruled directly contrary to this court's tentative ruling on the defendant's motion to dismiss this adversary proceeding. The court concluded, based on Cal. Code Civ. Proc. § 405.23 (concerning notices of pending action), that the defendant was required to serve a copy of the in rem order on the plaintiff and her husband, and because the defendant failed to do so, its foreclosure sale was void as having been conducted in violation of the automatic stay in the plaintiff's chapter 13 case. In her supplemental brief on the defendant's motion to dismiss the adversary proceeding, the plaintiff cited no authority that would alter this court's tentative ruling on the substantive issue of the effect of the in rem order. She cited only

the state court judgment. This court is therefore left to determine which court's opinion prevails - this court's opinion in its tentative ruling or the state court's opinion in its August 2, 2017 judgment.³

The court intends to use this hearing as a status conference to determine whether the parties are in a posture where the matter might be voluntarily resolved and whether mediation under the court's Bankruptcy Dispute Resolution Program would be helpful. If not, the court will hear the matter.

- 1 According to the state court judgment, the trial was held May 22, June 19, and July 31, 2017.
- 2 The plaintiff in this adversary proceeding and her husband were the defendants in the state court action and the defendant in this adversary proceeding was the plaintiff. For this ruling in the adversary proceeding, the court will use the denominations of the parties in the adversary proceeding.
- 3 Of course, if the plaintiff had not taken this court up on its offer to allow supplemental briefing on the one precise issue, this court would have adopted its tentative ruling as its final ruling, and the shoe would be on the other foot insofar as the plaintiff's collateral estoppel argument is concerned. That is, this court's order would have predated the state court's judgment, if in fact, the state court had gone ahead with its ruling.

13. 17-90563-D-13 JEFFREY MAYFIELD MOTION TO DISMISS CASE
UST-1 8-3-17 [19]

Final ruling:

This case was dismissed on August 8, 2017. As a result the motion will be denied by minute order as moot. No appearance is necessary.

14. 13-91270-D-13 DONALD/SONDRA WISSNER MOTION TO SUBSTITUTE SONDR
JAD-2 ELIZABETH WISSNER AS
REPRESENTATIVE FOR DONALD BRUCE
WISSNER, MOTION FOR EXEMPTION
FROM FINANCIAL MANAGEMENT
COURSE AND MOTION FOR WAIVER OF
THE SECTION 1328 CERTIFICATE
REQUIREMENTS
8-7-17 [30]

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 to Substitute Sondra Elizabeth Wissner as Representative for Donald Bruce Wissner and to Excuse Debtor Donald Bruce Wissner From Completing Post Petition Instructional Course and the 11 U.S.C. Section 1328 Certificate or Certificate of Chapter 13 Debtor re 11 U.S.C. Section 522(q) Exemptions. Moving party is to submit an appropriate order. No appearance is necessary.

15. 17-90484-D-13 MAURICE/SHARRON HARDY OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
8-7-17 [16]

16. 17-90499-D-13 LANCE/CARLA AZEVEDO OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
8-7-17 [15]

Final ruling:

This is the trustee's objection to confirmation of the debtors' original chapter 13 plan. On August 21, 2017, the debtors filed an amended plan and a motion to confirm it, set for hearing on October 3, 2017. As a result of the filing of the amended plan, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

17. 16-90758-D-13 SUZAN CHILDERS CONTINUED OBJECTION TO CLAIM OF
SSA-3 BECHAROFF CAPITAL CORP., CLAIM
NUMBER 6
5-5-17 [48]