

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 6, 2015 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.	10-53107-D-13 JOSE/NELLY FERNANDEZ TOG-15 Final ruling:	OBJECTION TO CLAIM OF JPMORGAN CHASE BANK, N.A., CLAIM NUMBER 14 8-20-15 [120]
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The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the debtors' objection to claim. No appearance is necessary.

2.	15-25811-D-13 EMILIE BURTON RDG-2	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-4-15 [24]
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3. 15-25811-D-13 EMILIE BURTON OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
9-4-15 [27]

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 debtor's claim of exemptions. Moving party is to submit an appropriate order. No appearance is necessary.

4. 14-30012-D-13 SEN NGUYEN AND EN CU MOTION TO MODIFY PLAN
MJH-3 8-21-15 [52]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties failed to serve Thi Quynh Hoa, listed on their Schedule F as being owed \$28,000, at all; thus, they failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The court notes that this creditor was scheduled with an apparently incomplete address in Vietnam ("Thi Quynh Hoa, Ho Chi Minh City, VN"), which the PACER matrix lists as an undeliverable address.

As a result of this service defect, the motion will be denied and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

5. 15-23324-D-13 RUDY/RACHEL SAUSEDA MOTION TO CONFIRM PLAN
PGM-1 8-21-15 [31]

6. 15-25727-D-13 SUSAN WALKER OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
9-4-15 [20]

7. 15-23732-D-13 KEVIN ORR
LR-1

MOTION TO CONFIRM PLAN
8-19-15 [43]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons. First, the motion seeks approval of a first amended plan and the proof of service purports to evidence service of a first amended plan, whereas there is no such plan on file. The moving party has filed two different plans in this case (one of them was filed twice), but both are entitled only Chapter 13 Plan. Without differentiation in the titles, the record does not clearly reflect which plan was served or which one the debtors are seeking to confirm. Second, the moving party failed to serve the creditor who filed a request for special notice at the designated address, as required by Fed. R. Bankr. P. 2002(g). The request was filed and served on the debtor and his counsel several weeks before this motion was filed. There are only two creditors in this case; the creditor who requested special notice is by far the larger of the two.

As a result of these service defects, the motion will be denied and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

8. 15-26536-D-13 JOSE/MARIA NUNEZ
JCK-1

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA
8-26-15 [8]

Final ruling:

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

9. 15-25443-D-13 SALVADOR MONTES LEDEZMA
RNE-2 AND ROSA MONTES

MOTION TO CONFIRM PLAN
8-21-15 [29]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. On September 9, 2015, the debtors filed a further amended plan. As a result of the filing of the further amended plan, this motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

10. 15-25545-D-13 HERBERT JOHN BASA
RDG-1

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
9-4-15 [21]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The basis of the objection is that the debtor failed to file a spousal waiver to allow him to use the exemptions provided by Cal. Code Civ. Proc. § 703.140(b). On September 9, 2015, the debtor filed a spousal waiver in the correct form signed by the debtor and his spouse. As a result of the filing of the spousal waiver, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

11. 15-25545-D-13 HERBERT JOHN BASA
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
9-4-15 [18]

12. 14-28450-D-13 MONTY HOPPER
CJY-1

MOTION TO MODIFY PLAN
8-21-15 [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 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.

13. 14-31159-D-13 ELISA SOTO
GMW-4

MOTION TO CONFIRM PLAN
8-17-15 [77]

Final ruling:

This is the debtor's motion to confirm a second amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party served only one of the creditors in this case, BMW Bank of North America/BMW Financial Services, and failed to serve the three other creditors who have filed claims, all of which claims were on file months before this motion was filed; and (2) the moving party failed to serve the creditor listed on Schedule F that has not filed a proof of claim, Bank of America. Thus, the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The court notes also that the second amended plan appears in the court's record only as an attachment to the motion; it has not been filed as a stand-alone document.

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

14. 15-25760-D-13 JUAN/KIMBERLY MARTINEZ
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
9-4-15 [19]

15. 15-25760-D-13 JUAN/KIMBERLY MARTINEZ
RDG-2

OBJECTION TO DEBTORS' CLAIM OF
EXEMPTIONS
9-4-15 [22]

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 debtor's claim of exemptions. Moving party is to submit an appropriate order. No appearance is necessary.

16. 11-25162-D-13 RONNIE/GLORIA MOISES
MRL-1

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LIVIAKIS LAW
FIRM, PROFESSIONAL CORPORATION
FOR MIKALAH RAYMOND LIVIAKIS,
DEBTORS' ATTORNEY(S)
9-8-15 [79]

17. 11-47463-D-13 KEVIN/PHYLLIS MCNAIR
MSN-1

MOTION TO MODIFY PLAN
8-26-15 [113]

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.

18. 14-27569-D-13 DAWN RODRIGUEZ
SJS-1

CONTINUED MOTION FOR AN ORDER
TO SHOW CAUSE FOR VIOLATION OF
THE CONFIRMATION ORDER
7-16-15 [26]

Tentative ruling:

This is the debtor's motion for an order to show cause, for an order finding CitiMortgage, Inc. ("Citi") and Bayview Loan Servicing, LLC ("Bayview") in contempt of court and imposing sanctions against them, and for an award of damages, attorney's fees, and costs. On September 11, 2015, Bayview filed opposition. On September 22, 2015, Citi and the debtor filed a stipulation extending Citi's time to respond to the motion to September 25, 2015. The court approved the stipulation. On September 24, 2015, the debtor filed a document by which she purported to withdraw the motion.

At that time, because of the filing of Bayview's opposition, the debtor no longer had the right to withdraw the motion unilaterally. Fed. R. Civ. P. 41(a)(1), incorporated herein by Fed. R. Bankr. P. 7041 and 9014(c). Thus, the court will hear the matter to determine whether Citi or Bayview objects to the motion being withdrawn by the debtor. If no party appears at the hearing, the court will construe the debtor's purported withdrawal of the motion as an indication that she does not intend to respond to Bayview's opposition and will deny the motion.

19. 15-25770-D-13 ERIC BARBARY AND MARIAN
BHT-1 CORK-BARBARY

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
8-14-15 [23]

20. 15-25770-D-13 ERIC BARBARY AND MARIAN
RDG-1 CORK-BARBARY

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
9-4-15 [29]

21. 15-23371-D-13 HOK MA AND LOAN THAI
KAZ-1
PNC BANK, N. A. VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
8-10-15 [36]

22. 15-23371-D-13 HOK MA AND LOAN THAI
MJH-1

MOTION TO CONFIRM PLAN
8-13-15 [42]

23. 15-24982-D-13 BENNIE WILSON
HWW-3

MOTION TO VALUE COLLATERAL OF
CALIFORNIA REPUBLIC BANK
9-5-15 [35]

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.

24. 15-24982-D-13 BENNIE WILSON
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
8-10-15 [29]

25. 15-25584-D-13 ANDREW/SHELLYN MOULYN OBJECTION TO CONFIRMATION OF
RDG-3 PLAN BY RUSSELL D. GREER
9-4-15 [27]

Final ruling:

This case was dismissed on September 23, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

26. 15-25491-D-13 CLAUDIA SANDERS OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
9-4-15 [31]

27. 15-21854-D-13 CEFERINO/XIOMARA GONZALES CONTINUED MOTION FOR RELIEF
JHW-1 FROM AUTOMATIC STAY
FORD MOTOR CREDIT COMPANY, 8-21-15 [42]
LLC VS.

28. 15-21854-D-13 CEFERINO/XIOMARA GONZALES MOTION TO SUBSTITUTE COLLATERAL
MSM-3 9-21-15 [58]

Tentative ruling:

This is the debtors' motion to extend the automatic stay pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will hear opposition, if any, at the hearing. However, as to the debtors' largest creditor, who is the creditor who prompted the filing of this new case and very likely this motion, service of the motion was not sufficient.

That creditor is Leonani Garcia, who holds a \$234,985 judgment against debtor Wilson Sarhad and his business, W.S. Towing, Inc. The debtors describe this creditor in their motion as their "largest unsecured creditor"; further, the creditor filed her proof of claim in the prior case as an unsecured claim. However, attached to the proof of claim in the debtors' prior case, in addition to a copy of the judgment, are copies of an abstract of judgment recorded in Stanislaus County, which is the county where the debtors' residence, which they own, is located, and a notice of judgment lien filed with the Secretary of State. Both the recording and the filing pre-dated the filing of the debtors' prior case; thus, the recording and filing were not done in violation of an automatic stay and appear to be valid. The court does not understand the debtors' basis for describing the creditor in this motion as an unsecured creditor.

The motion and the debtors' supporting declaration state that this case was "prompted by a writ of execution being served on the Debtors' bank account by the largest unsecured creditor, which would have prevented the Debtors from making their September 2015 home mortgage payment and paying their utility and insurance expenses." Mot. at 2:17-20. Yet the debtors served this motion on that creditor only at the address on their schedules filed in the prior case, which were filed September 11, 2014, whereas on January 7, 2015, the creditor filed her proof of claim in that case on which she gave her address as a different address in a different city. In addition, the proof of claim also lists the name and address of the creditor's attorney, who also filed a request for special notice and an objection to confirmation in the prior case. The debtors failed to serve this motion on the debtor at her new address and failed to serve her attorney.

For this reason, as to this creditor, the court intends to deny the motion or continue the hearing to allow the moving party to address this service defect. The court will hear the matter.