

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

October 13, 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.	15-90702-D-13	VIRGINIA ZEPEDA	OBJECTION TO CONFIRMATION OF
	RDG-1		PLAN BY RUSSELL D. GREER
			9-4-15 [15]

2.	15-90702-D-13	VIRGINIA ZEPEDA	OBJECTION TO DEBTOR'S CLAIM OF
	RDG-2	Final ruling:	EXEMPTIONS
			9-4-15 [18]

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 her to use the exemptions provided by Cal. Code Civ. Proc. § 703.140(b). On September 15, 2015 the debtor filed a spousal waiver in the correct form signed by the debtor and her 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.

3. 15-90703-D-13 ANGELITO FERFAS
KAZ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JPMORGAN CHASE BANK,
N.A.
9-8-15 [32]

4. 15-90703-D-13 ANGELITO FERFAS
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL GREER
9-4-15 [26]

5. 15-90703-D-13 ANGELITO FERFAS
RDG-3

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
9-4-15 [29]

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

6. 12-90805-D-13 BILL/BERTHA LOVE
JDP-1

MOTION TO VALUE COLLATERAL OF
CITIBANK, N.A.
9-3-15 [45]

7. 15-90406-D-13 GEOFFREY WIK AND JENNIFER MOTION TO CONFIRM PLAN
SLH-1 SPENCER-WIK 8-18-15 [31]

Final ruling:

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

8. 15-90611-D-13 MARJORIE SIMPSON MOTION TO CONFIRM PLAN
TOG-1 8-24-15 [16]

9. 11-90115-D-13 ISRAEL/REBECA VARGAS MOTION TO MODIFY PLAN
TOG-9 8-10-15 [175]

10. 15-90226-D-13 JOHNNY/TAMARA MATTHEWS CONTINUED MOTION TO VALUE
DCJ-3 COLLATERAL OF U.S. BANK N.A.
8-18-15 [59]

11. 15-90229-D-13 STANLEY/KAREN SALBECK MOTION TO CONFIRM PLAN
DCJ-2 8-17-15 [53]

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.

12. 15-90630-D-13 RANDY RAMIREZ MOTION TO CONFIRM PLAN
EWG-2 8-11-15 [44]

Final ruling:

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

13. 12-91233-D-13 DANIEL PARTINGTON MOTION TO MODIFY PLAN
CJY-3 9-3-15 [48]

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.

14. 12-92433-D-13 DOUGLAS/JUDITH BRADSHAW MOTION TO MODIFY PLAN
CJY-4 8-25-15 [83]

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.

15. 12-92642-D-13 MARSHALL/CARA CROOM
MSN-2

MOTION TO MODIFY PLAN
8-24-15 [51]

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.

16. 15-90842-D-13 FRANCISCO PULIDO
TOG-1

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
9-1-15 [9]

Final ruling:

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

17. 15-90248-D-13 JOHN DELAO AND
MSN-1 ALEXANDRINA BARRERA

MOTION TO CONFIRM PLAN
8-18-15 [33]

18. 15-90552-D-13 CATHY HOBBS
EWG-1

MOTION TO CONFIRM PLAN
8-17-15 [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 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.

19. 12-91356-D-13 CARLOS/JENNIE PERAL MOTION TO TRANSFER REAL
CJY-7 PROPERTY
9-15-15 [78]

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 transfer real property. Moving party is to submit an appropriate order which is to be signed by the Chapter 13 Trustee indicating his approval of its form. No appearance is necessary.

20. 15-90762-D-13 BERNARD CLARK MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
CAPITAL INCOME AND GROWTH
FUND, LLC VS. 8-25-15 [21]

21. 12-90866-D-13 JOSE/LUCIA BENITEZ MOTION TO MODIFY PLAN
CJY-1 8-21-15 [48]

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.

22. 15-90566-D-13 HUGH/PENNY BRENNAN CONTINUED MOTION FOR TURNOVER
JGL-1 AND/OR MOTION FOR SANCTIONS
6-25-15 [12]

Final ruling:

This motion was dismissed by stipulated order on September 25, 2015. As a result, this matter is removed from calendar. No appearance is necessary.

23. 12-90370-D-13 JARED/MELISSA SOMMERVILLE MOTION TO VALUE COLLATERAL OF
JDP-1 OCWEN LOAN SERVICING, LLC
9-15-15 [61]

Final ruling:

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

24. 13-91970-D-13 JEAN VAUGHAN MOTION TO MODIFY PLAN
CJY-4 8-14-15 [59]

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. 14-91471-D-13 MORIS/KATRINE KOOCHOF MOTION TO CONFIRM PLAN
BSH-4 8-10-15 [64]

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. 15-90073-D-13 RAYMOND STARK MOTION TO CONFIRM PLAN
EWG-3 8-11-15 [71]

Final ruling:

This case was dismissed on August 13, 2015. As a result the motion will be denied by minute order as moot. No appearance is necessary.

27. 15-90675-D-13 RYAN BRITTAIN
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
9-4-15 [13]

28. 15-90583-D-13 OLIVIA VENTURA
RDG-2

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
8-10-15 [32]

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.

29. 15-90386-D-13 MICHAEL CARSON

CONTINUED ORDER TO SHOW CAUSE
8-19-15 [51]

Tentative ruling:

This is a hearing on the court's Order to Show Cause filed August 19, 2015 (the "OSC"), which directed attorney Robert Rodriguez (the "Respondent"), who was then the debtor's attorney of record, to show cause why he should not be ordered to disgorge all fees paid to him in connection with this case for failure to appear and represent his client at a hearing on the trustee's motion to dismiss the case, held August 18, 2015. As required by the OSC, the Respondent has filed a response in which he states that he failed to appear at the hearing because his license to practice law was suspended. He states he learned about the suspension on or about June 23, 2015 and did not anticipate any law and motion matters between July 16, 2015 and September 16, 2015.¹ He states, "I have every intention of representing Debtor to completion of his chapter 13 bankruptcy" (Rodriguez Decl., filed Sept. 1, 2015, at 1:24-25), adding that he can resume his representation on September 17, 2015. Finally, he states that the debtor has attempted to find new counsel, without success; the Respondent believes that if the debtor finds new counsel, the Respondent is "entitled to money earned in quantum meruit." Id. at 2:7-8.

The suspension of the Respondent's law license is attributable to the Respondent, not the debtor, and is not a satisfactory excuse for his failure to appear. Although he was not licensed to practice law on the date of the hearing, the Respondent apparently ignored the trustee's motion completely, making no attempt to find another attorney to substitute in to the case so the debtor could be represented at the hearing. The Respondent's cavalier response to the OSC, in which he simply abdicates any responsibility for failing to appear at a hearing at which the debtor's case might have been dismissed underscores his lack of proper representation of his client.

For his compensation in this case, the Respondent "opted in" to Subpart (c) of LBR 2016-1; that is, he opted to have his fees approved as part of the chapter 13 plan confirmation process. He filed a statement pursuant to Fed. R. Bankr. P. 2016(b) indicating he had agreed to accept \$3,500 for his services in the case, of which he received the entire amount prior to the filing, leaving a balance due of \$0. As required by LBR 2016-1(c)(2), the Respondent filed a fully-executed Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, which also indicated that the initial fees charged in the case were \$3,500, all of which had been paid pre-petition. When an attorney "opts in" to Subpart (c) of the local rule, the initial fee is generally expected to fairly compensate the attorney for all pre-confirmation and most post-confirmation services. LBR 2016-1(c)(3). Here, the Respondent plainly has not earned the full amount of the fee, as a plan has not been confirmed. Further, the Respondent failed to properly represent the debtor and failed to perform the services he was required to and had agreed to perform up to the time another attorney substituted in to the case.^{2 3}

For the reasons stated, the Respondent is not entitled to the \$3,500 fee he was paid. He will be required to disgorge the full amount, subject to the Respondent filing a fee application and setting it for hearing if he believes he is entitled to retain a portion of the fee. Unless the trustee objects, the court intends to require that the funds be disgorged to the debtor.

The court will hear the matter.

1 According to the State Bar's website, the suspension took effect on July 16, 2015 and was lifted September 14, 2015. The day before the suspension took effect, July 15, 2015, the Respondent filed a motion to value collateral, purporting to set it for hearing on October 6, 2015 (a date for hearings in Sacramento Division cases, whereas this is a Modesto Division case). He also filed an amended chapter 13 plan but failed to set it for hearing at all, as required by LBR 3015-1(d)(1). It was this failure to set the amended plan for hearing that caused the trustee to file the motion to dismiss the case.

2 In the Rights and Responsibilities, the Respondent expressly agreed to timely respond to all motions filed by the chapter 13 trustee. He did not respond to the trustee's motion to dismiss at all.

3 The Respondent's Rule 2016(b) statement contains a wide-ranging violation of the agreed Rights and Responsibilities and of this court's local rule. Under LBR 2017-1(a)(1), an attorney retained to represent a debtor is retained for all purposes in the case, including motions for relief from stay and motions to avoid liens. As stated in the Rights and Responsibilities, the Respondent agreed to "[e]xplain to the Debtor that the attorney is being engaged to represent the Debtor for all purposes in the case, except adversary proceedings, pursuant to [LBR] 2017-1(a)(1)." Among the specific tasks the Respondent agreed in the Rights and Responsibilities to perform were advising the debtor about chapter 13 versus chapter 7, discussing both, and answering the debtor's questions; preparing, filing, and serving any necessary amended statements and schedules; timely responding to any motions filed by the trustee and other motions, including motions for relief from stay; preparing, filing, and serving any appropriate motions to avoid liens and motions to value collateral; and providing such other legal services as are necessary for the administration of the case.

In contrast, the Respondent's Rule 2016(b) statement states that, by agreement with the debtor, the Respondent's fees would not include amending the petition, schedules, or statement of affairs; any contested matters, including motions for relief from stay, motions for turnover, motions to avoid liens, and motions to extend time; reviewing, compiling, and copying documents to be produced pursuant to any order to appear at any examination; appearing at continued meetings of creditors after the first one; and advising or expressing an opinion as to whether tax liabilities will be discharged in the case.

30. 15-90687-D-13 THALISHA CALL MOTION TO CONFIRM PLAN
MMS-1 9-14-15 [28]

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 gave only 29 days' notice of the hearing rather than 42 days', as required by LBR 3015-1(d)(1) and applicable rules; (2) the moving papers all give the location of the hearing as the Sacramento courthouse, whereas this is a Modesto Division case set on a hearing date reserved for hearings in Modesto Division cases; and (3) the moving party failed to serve the State Board of Equalization at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b).

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

31. 15-90687-D-13 THALISHA CALL OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
9-4-15 [24]

32. 15-90388-D-13 JOSEPH SHAW AND MARY CONTINUED OBJECTION TO
RDG-1 INDERBITZIN-SHAW CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-12-15 [18]

33. 15-90689-D-13 EARLINE GARITSON OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
9-4-15 [17]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

34. 15-90393-D-13 SALVADOR JIMENEZ AND MOTION TO CONFIRM PLAN
MHL-2 DOREHIDY MENDOZA 8-11-15 [48]

35. 13-91898-D-13 ROY/DORENE CORSON MOTION TO MODIFY PLAN
BSH-4 8-10-15 [50]

36. 15-90206-D-13 KATRINA CHANDLER MOTION TO VALUE COLLATERAL OF
EWG-2 TOYOTA MOTOR CREDIT COMPANY
9-29-15 [63]

37. 10-92624-D-13 GEORGE MIRANDA MOTION TO VALUE COLLATERAL OF
CJY-2 GREEN TREE SERVICING, LLC
9-24-15 [59]
38. 15-90728-D-13 AARON/HENRIETTA DAVIS OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
9-21-15 [16]
39. 10-90936-D-13 CHRISTOPHER/MICHELLE MOTION TO VALUE COLLATERAL OF
CJY-1 DICKINSON COMPASS BANK
9-29-15 [45]
40. 15-90754-D-13 MICHAEL/SHEILA HAEFLINGER OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
9-21-15 [20]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

41. 15-90762-D-13 BERNARD CLARK
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
9-21-15 [29]

42. 15-90386-D-13 MICHAEL CARSON

AMENDED MOTION TO CONFIRM
TERMINATION OR ABSENCE OF STAY
9-22-15 [75]

43. 10-93192-D-13 DEBORA LACKEY
CJY-1

MOTION TO VALUE COLLATERAL OF
REAL TIME RESOLUTIONS, INC.
9-24-15 [52]

44. 15-90397-D-13 DANIEL MITCHELL
MET-1

MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY O.S.T.
10-5-15 [57]