

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 17, 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.	12-41200-D-13	JOSE/CYNTHIA GUERRERO	MOTION FOR OMNIBUS RELIEF
	PGM-5		10-20-15 [84]

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 for the Chapter 13 case to proceed and will waive the requirement that debtor Jose Guerrero file a § 1328 certificate. Moving party is to submit an appropriate order. No appearance is necessary.

2.	15-26002-D-13	NATALIE LOPEZ	CONTINUED OBJECTION TO
	RDG-1		CONFIRMATION OF PLAN BY RUSSELL
			D. GREER
			9-22-15 [28]

Final ruling:

This case was converted to a case under Chapter 7 on November 9, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

3. 15-24507-D-13 LILLIAN GLEASON MOTION TO CONFIRM PLAN
RLG-3 9-25-15 [68]

4. 15-22908-D-13 GLORIA RAMIREZ MOTION TO CONFIRM PLAN
BSH-3 9-22-15 [42]

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.

5. 15-27011-D-13 PAMELA BECKER OBJECTION TO CONFIRMATION OF
BHT-1 PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
10-14-15 [21]

6. 15-22818-D-13 SURINDER SINGH OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
10-9-15 [28]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. On November 4, 2015, the debtor filed an amended schedule of exemptions. As a result of the filing of the amended schedule of exemptions, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

7. 12-32421-D-13 TIMOTHY/TAMERA ARAGON MOTION FOR RELIEF FROM
RRR-1 AUTOMATIC STAY
PINES AT MADRAS HOMEOWNERS 10-15-15 [72]
ASSOCIATION, INC. VS.

Final ruling:

The motion is denied for the following reasons: (1) the notice of hearing failed to include information required by LBR 9014-1(d)(2); (2) the moving party's proof of service was not filed as a separate document as required by LBR 9014-1(e)(3); (3) the proof of service indicates that the debtor was not served; and (4) the proof of service was not signed. As a result of these procedural defects the court will deny the motion by minute order. No appearance is necessary.

8. 15-20921-D-13 RICHARD/TWAN WILLIAMS MOTION TO MODIFY PLAN
JCK-1 10-1-15 [26]

9. 15-20922-D-13 PHILLIP SAVAGE MOTION TO DISMISS CASE AND/OR
GMW-1 MOTION TO CONVERT CASE TO
CHAPTER 7
10-19-15 [28]

10. 15-26625-D-13 ANTHONY MOORE OBJECTION TO HOMESTEAD
RDG-3 EXEMPTION
10-9-15 [32]

Final ruling:

This case was dismissed on October 22, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

11. 15-26928-D-13 DAN/KIMBERLEE FRASER
MDE-1

OBJECTION TO CONFIRMATION OF
PLAN BY HSBC BANK USA, N.A.
10-22-15 [19]

12. 14-31741-D-13 RUBEN VALLEJO
PLC-7

MOTION TO CONFIRM PLAN
9-30-15 [109]

Final ruling:

This case was dismissed on October 22, 2015. As a result the motion will be denied by minute order as moot. No appearance is necessary.

13. 15-25545-D-13 HERBERT JOHN BASA
HLG-1

MOTION TO CONFIRM PLAN
10-2-15 [29]

Final ruling:

This is the debtor's motion to confirm a first amended chapter 13 plan. On November 10, 2015, the debtor filed a second amended plan. As a result of the filing of the second amended plan, this motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

14. 13-20157-D-13 DAVID JACQUES AND MELONIE
MJH-2 BROWN-JACQUES

MOTION TO MODIFY PLAN
10-1-15 [57]

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. 14-31159-D-13 ELISA SOTO

GMW-5

Final ruling:

MOTION TO CONFIRM PLAN

10-5-15 [81]

This case was converted to a case under Chapter 7 on November 5, 2015. As a result the motion will be denied by minute order as moot. No appearance is necessary.

16. 15-26163-D-13 JOHN/ANNETTE PAYAN

JM-1

Final ruling:

MOTION TO VALUE COLLATERAL OF

VERIPRO SOLUTIONS

9-23-15 [20]

This is the debtors' motion to value collateral of Veripro Solutions ("Veripro"). The motion will be denied because the moving parties failed to serve Veripro in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Veripro by certified mail and first-class mail (1) to the attention of its Bankruptcy Department; and (2) ostensibly through its agent for service of process, Corporation Service Company, at an address in Austin, Texas. The first method was insufficient because service on a corporation, partnership, or other unincorporated association must be to the attention of an officer, managing or general agent, or agent for service of process, not its Bankruptcy Department. The second method was insufficient because, although Corporation Service Company is Veripro's agent for service of process, as registered with the Texas Secretary of State, the address used, 211 E. 75th Street, Suite 620, was incorrect. The correct address, according to the records of the Texas Secretary of State, is 211 E. 7th Street, Suite 620.

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

17. 15-26163-D-13 JOHN/ANNETTE PAYAN

RDG-1

CONTINUED OBJECTION TO

CONFIRMATION OF PLAN BY RUSSELL

D. GREER

9-21-15 [17]

18. 15-26363-D-13 STEVE/CHARITO BROWN

RDG-3

Final ruling:

OBJECTION TO DEBTORS' CLAIM OF
EXEMPTIONS

10-9-15 [29]

This is the trustee's objection to the debtors' claim of exemptions. On October 13, 2015, the debtors filed an amended schedule of exemptions. As a result of the filing of the amended schedule of exemptions, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

19. 13-34168-D-13 JEFF/KATIE FURTADO MOTION TO MODIFY PLAN
MLP-1 10-5-15 [27]

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.

20. 15-21770-D-13 SHIRLEY THURMAN MOTION TO MODIFY PLAN
JDP-1 10-2-15 [22]

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.

21. 15-25770-D-13 ERIC BARBARY AND MARIAN MOTION TO CONFIRM PLAN
PGM-1 CORK-BARBARY 10-6-15 [35]

22. 15-23574-D-13 LONEY/MARY TURPIN MOTION TO INCUR DEBT
TAG-3 10-16-15 [60]

23. 10-41077-D-13 JEFF/CHERYL KESINGER
ALB-1

MOTION TO SUBSTITUTE
JOINT-DEBTOR FOR DEBTOR AND/OR
MOTION FOR EXEMPTION FROM
FINANCIAL MANAGEMENT COURSE ,
MOTION TO EXCUSE DEBTOR FROM
FILING SECTION 1328 AND SECTION
522(Q)
10-19-15 [43]

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 to substitute joint-debtor for debtor and excuse debtor from filing certificates 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.

24. 15-24982-D-13 BENNIE WILSON
HWW-4

MOTION TO CONFIRM PLAN
9-30-15 [50]

25. 12-41787-D-13 EDDIE/DIANN MANNIE
JCK-4

MOTION TO MODIFY PLAN
10-12-15 [63]

26. 15-26687-D-13 ARNOLD/MICHELLE JAMES
RDG-2

OBJECTION TO DEBTORS' CLAIM OF
EXEMPTIONS
10-9-15 [19]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. On October 26, 2015, the debtors filed an amended schedule of exemptions. As a result of the filing of the amended schedule of exemptions, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

27. 15-27387-D-13 JOSE/JOSEFINA PALOMINO MOTION TO AVOID LIEN OF
DVD-1 SUNLAN-020105, LLC
Final ruling: 10-5-15 [13]

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. No appearance is necessary.

28. 15-27387-D-13 JOSE/JOSEFINA PALOMINO MOTION TO VALUE COLLATERAL OF
DVD-2 INTERNAL REVENUE SERVICE
Tentative ruling: 10-5-15 [18]

This is the debtors' motion to value collateral of the Internal Revenue Service ("IRS"), pursuant to § 506(a) of the Bankruptcy Code. The IRS's claim is secured by a tax lien on the debtors' real property that is junior to a deed of trust and the amount owed on the senior encumbrance exceeds the value of the real property. Thus, there is no equity in the real property to support the IRS's lien. The total value of the debtors' personal property is \$23,181.43 and there are no liens against the personal property other than the IRS's tax lien. Thus, the debtors request that the court value the collateral securing the IRS's claim at \$23,181.43; the court is prepared to grant that relief.

However, the debtors also request a determination that the balance of the IRS's claim is a general unsecured claim. The debtors have submitted no evidence to support the conclusion that the balance of the claim is a general as opposed to priority claim. The proof of claim filed by the IRS lists a secured claim of \$23,181.43, a priority claim of \$289.76, and a general unsecured claim of \$211,007.29. The court has no reason to expect the IRS will amend its claim in the future, and for the present at least, it appears the IRS concedes the balance of its claim, over and above \$289.76, is a general unsecured claim. However, there is nothing procedural that would prevent the IRS from amending its claim and the debtors have not supported this aspect of their request with either argument or evidence.

For the reasons stated, the court will grant the motion in part and set the value of the IRS's secured claim at \$23,181.43. The balance of the claim shall be treated as an unsecured claim without prejudice to the IRS amending its claim in the future in any Chapter 13 plan. No further relief will be afforded. The court will hear the matter.

29. 15-27387-D-13 JOSE/JOSEFINA PALOMINO MOTION TO VALUE COLLATERAL OF
DVD-3 TRINITY FINANCIAL SERVICES, LLC
10-9-15 [31]

30. 14-28090-D-13 JOSEPH CLARK MOTION FOR RELIEF FROM
JAB-2 AUTOMATIC STAY
PROVIDENT SAVINGS BANK VS. 10-21-15 [102]

31. 10-43796-D-13 TERRANCE/CATHERINE MOTION TO VALUE COLLATERAL OF
JDP-1 PINHEIRO BANK OF AMERICA, N.A.
10-21-15 [60]

32. 14-30697-D-13 CAROLE PETERSEN MOTION TO EMPLOY MICHAEL E.
PGM-2 MECHILL AS SPECIAL COUNSEL
10-13-15 [154]

Tentative ruling:

This is the debtor's motion to employ special counsel. The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the moving party failed to serve the former 7 trustee in this case or her attorney. Both hold administrative claims in the case and both have requested special notice. As a result of this service defect, the court will hear the matter. In the event no appearance is made by or on behalf of the former chapter 7 trustee, the court will continue the hearing to allow the service defect to be corrected.

In addition, the supporting declaration of Michael Mechill demonstrates his firm has no connections with the debtor, the trustee, employees of the United States Trustee's office, creditors of the debtor, any of the debtor's accountants, or any other party-in-interest. It does not address connections, if any, with the respective attorneys of the debtor, trustee, creditors, or other parties-in-interest, as required by Fed. R. Bankr. P. 2014(b) and LBR 2014-1. The court will require the filing of a supplemental declaration.

33. 15-26807-D-13 LEY NGAR OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
10-26-15 [20]

Final ruling:

This case was dismissed on November 9, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

34.	15-27011-D-13 RDG-2	PAMELA BECKER	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 10-26-15 [28]
35.	15-26914-D-13 RDG-1	DANIELLA WALKER	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 10-26-15 [15]
36.	14-26718-D-13 RDG-1	HELEODORO ALVAREZ	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 10-26-15 [75]
37.	14-29931-D-13 WW-5	LISA ROCHA	CONTINUED MOTION TO CONFIRM PLAN 9-22-15 [122]

38. 15-26958-D-13 DAVIN/NICOLE LAWSON
BF-5
OBJECTION TO CONFIRMATION OF
PLAN BY PHH MORTGAGE
CORPORATION
10-27-15 [18]
39. 15-26963-D-13 SANTIAGO BRAVO GRANADOS
RDG-1
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-26-15 [20]
40. 15-27377-D-13 RUBEN/NORY CAHAYAG
RDG-2
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-26-15 [47]
41. 13-90205-D-13 MATTHEW/JOSIELYNN CRUDO
PGM-10
CONTINUED MOTION TO MODIFY PLAN
10-2-15 [200]

Tentative ruling:

This is the debtors' motion to confirm a modified 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 debtors in this case have engaged in an unrelenting campaign to retain as much as possible of their much higher than average income at the expense of their creditors. They began the case two and one-half years ago by proposing to pay a 1% dividend to their general unsecured creditors. It took them over a year to get a plan confirmed because, despite repeated objections by the trustee and denials of

their motions by the court, they tried to obtain confirmation of one plan after another that would have allowed them, among other things, to retain for themselves over \$900 per month in voluntary retirement contributions. They finally obtained confirmation of a 65% plan based on a budget that included no voluntary retirement contributions (and no mandatory contributions). Eight months later, the debtors filed a motion to approve a mortgage loan modification that would save them \$1,060 per month. However, to offset those savings, along with a \$2,397 per month increase in their combined gross income, the debtors resumed making \$916 per month in voluntary retirement contributions and increased their household expenses by \$1,387 per month.

The trustee objected on the basis that the increases in their expenses were unexplained and that the debtors were proposing to share none of the \$1,060 in mortgage savings or the \$2,397 in increased income with their creditors. In reply, the debtors made vague and unsupported claims about deferred home maintenance, increased use of telecom devices by their children, and increased driving on the joint debtor's part, and offered a \$500 increase in their plan payment; that is, of the total \$3,457 per month improvement in their circumstances, they proposed to share \$500 with their creditors, that proposal coming only after the trustee objected. The court rejected the proposal as being too little, too late, finding yet again that the debtors had failed to demonstrate good faith.

The debtors immediately proposed another plan, proposing to increase their plan payment by almost \$1,500 per month, to \$4,500. They also proposed to increase the dividend to 100%, which was due, however, almost entirely to a decrease in the total of actual over expected general unsecured claims. The trustee again objected, this time on the basis that the plan would not pay 100% and that the debtors had failed to explain the resumption of their voluntary retirement contributions. In response, the debtors agreed to increase the plan payment by another \$1,000, to \$5,500 per month, and the plan was confirmed.

The debtors immediately defaulted, failing to make even a partial payment for the first month after confirmation. They responded to the trustee's notice of default by proposing yet another plan, this time to reduce their plan payment to \$2,800. They filed amended Schedules I and J showing debtor Matthew Crudo as having no income and joint debtor Josielynn Crudo as having gross income of \$14,466 per month, over \$5,000 more than they had reported just four months earlier, \$9,287. They indicated Matthew 1 had decided to leave his job of 20 years as a preemptive measure:

We have had several changes/problems that have arose which now require us to further modify our Chapter 13 Plan. These factors include; immediate uncertainty in our company's future has given me [Matthew] reason to believe my job will no longer be secured once our ownership decides to sell. This has caused us to make a decision to get ahead of the game and begin seeking employment elsewhere, in order to gain the confidence we need to ensure we can fulfill our Chapter 13 obligations.

Debtor's Decl., filed March 27, 2015, at 1:19-25.

The trustee objected on the ground - again - of lack of good faith, on the basis he could not determine whether the debtor had become unemployed and if so, when. In a reply declaration, Matthew testified the company he had been working for 18 years was being sold, and he had ended his employment effective March 31, 2015. He added he was seeking gainful employment but had been having stress issues from

working long hours for 18 years and sacrificing time with his children. He was under a doctor's care and taking medication for his stress.

In another declaration filed after the hearing was continued, Matthew testified he had negotiated a temporary part-time arrangement with his former employer and would be paid \$2,000 per month for 30 hours plus \$66.67 per hour over and above that. In denying the motion, the court noted that despite Matthew's negotiation of a \$2,000 per month income, as opposed to the \$0 listed when the plan was filed, the debtors had not proposed to pay any of that income into the plan. Further, on Josielynn's side of the ledger, offsetting the \$5,179 increase in her gross income since November of 2014 were (1) increased tax withholdings; (2) a new \$1,445 "mandatory" retirement contribution; and (3) an increase in her "required" repayment of a retirement loan from \$55 to \$516. In the six Schedules I the debtors had filed in this case before that new one, Josielynn had never shown a mandatory retirement contribution at all, only the voluntary contribution the trustee had so often objected to, and had never shown a retirement loan repayment higher than \$55 per month. She was and still is working in the same position for the same employer she has worked for at least the past 12 years; no explanation was suggested for this sudden \$1,445 mandatory contribution or the \$461 increase in the retirement loan repayment amount.

The court concluded the debtors were proposing to retain at least \$3,500 per month for themselves (Matthew's \$1,500 per month [after deduction of taxes] + Josielynn's \$1,445 in retirement contributions + \$461 increase in the retirement loan repayment), while reducing their plan payment from \$5,500 to \$2,800 for the next 11 months. Those figures, along with the debtors' history in this case, starting with the 1% dividend they proposed at the outset, led the court to conclude that the plan had not been proposed in good faith.

Not to be deterred, the debtors proposed the plan that is the subject of this motion. In yet another set of Schedules I and J, they continue to deduct \$1,445 in allegedly mandatory retirement contributions and to show the retirement loan repayment as increased to \$516, but have added Matthew's \$2,000 per month in income. To offset Matthew's income in part, they have increased their food expense by \$200, their transportation expense by \$420, and their recreation expense by \$100, and added self-employment taxes of \$200. Thus, they propose to reduce their plan payment from \$5,500 to \$4,000, increasing to \$7,400 after nine months, supported apparently by Matthew's hoped-for full-time employment.

The trustee has no problem with the increased expenses, objecting only that the average plan payment for the remainder of the plan will not fund a 100% plan; instead, the average plan payment would need to be increased by \$522 per month to fund that plan. The court also has no problem with the increased expenses. The court is, however, concerned that despite its ruling on the plan proposed in March, the debtors have failed to address in any way the fact that they are continuing with allegedly mandatory retirement contributions of \$1,445 per month, whereas they made no mandatory contributions during the first two years of this case, and continuing with a retirement loan repayment increased by \$461 per month. Given that the debtors are continuing to retain over \$1,900 per month for themselves at the expense of their creditors, leaving their creditors at risk of future negative developments, the court is unable to conclude that the plan has been proposed in good faith. If the debtors wish to obtain confirmation of this plan, they will need to submit admissible convincing evidence demonstrating that the \$1,445 per month is a mandatory contribution and that the \$461 increase in the retirement loan repayment was also mandatory, and if not, that the court should nevertheless conclude that the

plan has been proposed in good faith.

The court has reviewed the debtors' reply to the trustee's opposition. It addresses only the trustee's feasibility objection and not the issues raised by the trustee and the court in connection with the last motion and addressed in this ruling.

The court will hear the matter.

1 The court uses the debtors' given names for ease of reference only; no disrespect is intended.