

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Modesto, California

**December 18, 2018 at 10:00 a.m.**

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**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.**

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|----|------------------------|-----------------------|--|
| 1. | 18-90606-D-13<br>APN-1 | ANGELO/JUDITH JIMENEZ | CONTINUED OBJECTION TO<br>CONFIRMATION OF PLAN BY TOYOTA<br>MOTOR CREDIT CORPORATION<br>9-24-18 [15] |
| 2. | 18-90606-D-13<br>RDG-1 | ANGELO/JUDITH JIMENEZ | CONTINUED OBJECTION TO<br>CONFIRMATION OF PLAN BY RUSSELL<br>D. GREER<br>10-15-18 [20]               |

3. 18-90326-D-13 EDWARD/CYNTHIA ROCHA AMENDED MOTION TO CONFIRM PLAN  
JAD-2 11-21-18 [45]

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties gave only 27 days' notice of the hearing rather than 35 days', as required by LBR 3015-1(d)(1) and applicable rules. The hearing was initially continued from September 25, 2018 to November 6, 2018 because the moving parties had failed to serve the two creditors listed on their Schedule H as co-debtors on the debtors' car loans. The debtors then re-served the original notice, motion, and supporting documents on the creditors listed on their Schedule H, thereby giving those creditors notice of a hearing date and deadline to oppose the motion that had already passed.

The hearing was continued one last time to allow the moving parties to cure this notice defect. The hearing was continued from November 6, 2018 to this date. The moving parties waited until November 21, 2018, when they filed and served an amended motion, notice of hearing, amended declaration, and a copy of the proposed plan as an exhibit. Although they served the creditors listed on their Schedule H, service on November 21, 2018 resulted in those and all other creditors being given only 27 days' notice.

As a result of this notice defect, the motion will be denied by minute order. No appearance is necessary.

4. 16-90340-D-13 RAMIRO/MARTA LUJAN MOTION TO MODIFY PLAN  
JAD-1 11-6-18 [41]

5. 18-90741-D-13 DONNA DIXON OBJECTION TO CONFIRMATION OF  
AP-1 PLAN BY WELLS FARGO BANK, N.A.  
11-13-18 [16]

6. 15-90351-D-13 HENRY PEREZ  
BSH-7

MOTION TO MODIFY PLAN  
11-1-18 [91]

**Final ruling:**

This is the debtor's motion to confirm a chapter 13 plan. The motion, notice of hearing, and declaration all state the debtor seeks to confirm a first modified plan, whereas the debtor's current confirmed plan is titled first modified plan and the plan filed with the motion is titled simply "Chapter 13 Plan." On August 20, 2018, August 21, 2018, and November 1, 2018, the debtor filed three different chapter 13 plans in this case, all titled simply "Chapter 13 Plan," with nothing in the title to distinguish them from one another or from the original plan filed in this case. The proof of service purports to evidence service of a "First Modified Chapter 13 Plan," whereas the First Modified Chapter 13 Plan in this case was filed two years ago. Thus, the proof of service does not evidence service of the plan filed with the motion.

Further, the moving party failed to serve the creditor holding one of the two claims filed in this case, Claim No. 1, at the address on its amended proof of claim filed May 18, 2016, as required by Fed. R. Bankr. P. 2002(g).

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

7. 17-90153-D-13 JASON UNDERWOOD  
PSB-4

MOTION TO MODIFY PLAN  
10-24-18 [76]

8. 16-90755-D-13 DOUGLAS WATKINS  
PSB-3

MOTION TO MODIFY PLAN  
11-9-18 [67]

**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.

**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.

**Tentative ruling:**

This is the plaintiff's motion to remand to the Stanislaus County Superior Court an unlawful detainer action the plaintiff commenced against the defendant on January 5, 2018, which the defendant has removed to this court. The defendant has filed an amended motion to continue the hearing date and extend her time to file a response. For the following reasons, the court intends to hear the matter as scheduled, on December 20, 2018, and tentatively, intends to grant the motion.

The defendant seeks a continuance on the grounds that: (1) the plaintiff's original notice of hearing gave the hearing date as December 18 in the caption but December 22 in the text; (2) presumably because the motion was served just before Thanksgiving, the defendant did not receive it for a week; and (3) per the court's recommendation, she is looking for counsel to represent her, and with the holiday season, she expects to find an attorney after the first of the year. The arguments are not persuasive. First, December 22 was a Saturday, an obviously incorrect hearing date. To the extent the defendant assumed the intended hearing date was a date on or after December 22, instead of December 18, the assumption was not reasonable. Second, the court's rules do not require additional time when service is made shortly before a holiday, even a four-day weekend.

Third, the defendant has had 11 months to seek counsel to represent her in the unlawful detainer action. Instead, she filed a motion to quash service of summons in the state court in pro se, in which she informed the court of her pending chapter 13 case and asserted the automatic stay as invalidating the foreclosure sale at which the plaintiff purchased the defendant's residence. According to the defendant, the state court put the action into "On Hold" status, which resulted in an almost eight-month delay. The defendant then waited three months after the court denied her motion to quash, in August, before filing her Notice of Removal. The defendant is herself a licensed attorney; the court would expect her, more than a non-attorney debtor, to be able to determine when she needs legal counsel. Having apparently taken no steps toward finding counsel, she now relies on this court's recommendation that she seek legal counsel, at a status conference in another adversary proceeding, in which she had, by that time, been representing herself for six months. The court's recommendation, in early November, does not justify additional time to respond to this motion, especially where the motion, on its face,

appears conclusive on at least one ground. The court will hear from the defendant on her request for a continuance, but she will need to present some indication of a viable opposition that needs to be briefed.

The plaintiff contends the defendant filed the Notice of Removal after the deadline set forth in Bankruptcy Rule 9027(a)(3). The plaintiff is correct. For state court actions commenced after the bankruptcy case was filed, as here, a notice of removal must be filed within the shorter of 30 days after receipt, through service or otherwise, of a copy of the initial pleading or 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons. Here, the defendant, by her own admission in a declaration supporting her motion to quash, filed in the state court, received a copy of the complaint on January 5, 2018. Thus, the last day for her to remove the action was February 4, 2018. The defendant did not file her Notice of Removal until nine months later.

The defendant asserted in her Notice of Removal that during the roughly six months the unlawful detainer action was "On Hold," the action was effectively stayed and the time to remove it was tolled. The argument is without merit. First, the only stay referred to in Rule 9027 is the automatic stay of § 362 of the Bankruptcy Code; there is no reference to stays or "On Hold" status placements by the state court. Second, the only time period tolled by the automatic stay is the time for removing a state court action filed before the commencement of the bankruptcy case. See Rule 9027(a)(2). There is no tolling provision for a state court action, like the one here, filed after the commencement of the bankruptcy case. See Rule 9027(a)(3). Third, even if the "On Hold" status had some effect on the removal deadline, the deadline had already passed - on February 4, 2018 - by the time the state court put the action on hold, on or about February 16, 2018 according to the defendant. The defendant has submitted no authority for the proposition that the deadline, once passed, is revived when the state court later puts the case on hold, and the court is aware of none.

To the extent the defendant intends to revive in this court the argument that she was never properly served, as she contended in her motion to quash, the argument would add nothing to the question of the timeliness of her Notice of Removal because the time to remove an action commenced post-petition begins to run when the defendant receives a copy of the initial pleading, through service or otherwise. Rule 9027(a)(3). The defendant has admitted she received a copy of the complaint on January 5. Thus, because the Notice of Removal was not timely filed, the court intends to grant the motion. The court will, however, consider the other arguments the defendant made in her Notice of Removal. The defendant has the burden of proof.

The removing party bears the burden of establishing federal jurisdiction. Ethridge v. Harbor House Rest., 861 F.2d 1389, 1393 (9th Cir. 1988). Furthermore, courts construe the removal statute strictly against removal. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (citations omitted). If there is any doubt as to the right of removal in the first instance, remand must be granted. See Gaus, 980 F.2d at 566.

Winn v. Chrysler Group, LLC, 2009 U.S. Dist. LEXIS 119661, \*5, 2009 WL 5206647 (E.D. Cal. 2009). Removal of an action on the ground of relationship to a bankruptcy case requires bankruptcy jurisdiction of the action. 28 U.S.C. § 1452(a).

The only suggestion of bankruptcy jurisdiction in the Notice of Removal is the

defendant's argument that the unlawful detainer action relates to "the unlawfulness" of the actions of the plaintiff's predecessor in foreclosing "against this bankruptcy estate property, in violation of the automatic stay . . . ." Notice of Removal, filed Nov. 8, 2018, at 5:20-23. The position is incorrect. The defendant was a debtor in a case pending within the one year preceding the commencement of her present chapter 13 case and the prior case was dismissed other than under § 707(b) of the Code. The defendant did not seek, in her present case, to extend the automatic stay; therefore, the stay expired on the 30th day after the filing of the present case - the 30th day was November 26, 2017.

The stay terminates "with respect to any action taken with respect to a debt or property securing such debt . . ." (§ 362(c)(3)(A)) and with respect to the debtor, the debtor's property, and property of the estate. Reswick v. Reswick (In re Reswick), 446 B.R. 362, 366-67 (9th Cir. BAP 2011). That is, the stay terminates "in its entirety." Id. at 373. As a result, when the plaintiff's predecessor foreclosed, on December 20, 2017, there was no automatic stay in place and the property was, after the sale, no longer property of the estate. Accordingly, the defendant has not carried her burden of showing that this court has any jurisdiction of the unlawful detainer action.

However, even if this court had jurisdiction, the court would remand the action. The court may remand the action to the state court "on any equitable ground." 28 U.S.C. § 1452(b). This standard is "an unusually broad grant of authority. It subsumes and reaches beyond all of the reasons for remand under nonbankruptcy removal statutes." McCarthy v. Prince (In re McCarthy), 230 B.R. 414, 417 (9th Cir. BAP 1999). Among the factors the court may consider, and those the court finds most pertinent in this case, are the extent to which state law issues predominate over bankruptcy issues, the likelihood of forum shopping on the part of one of the parties, and the possibility of prejudice to other parties. Wood v. Johnson (In re Wood), 2011 Bankr. LEXIS 5303, \*25-26 (9th Cir. BAP 2011).

There are no bankruptcy law issues in the unlawful detainer action, only issues of state law. The defendant caused unwarranted delays when she informed the state court that bankruptcy issues affected the action, yet she did not remove it to this court. She caused an additional delay after the state court denied her motion to quash, waiting three more months to file her Notice of Removal. According to the plaintiff, the defendant filed the Notice of Removal hours before the trial was to begin, on a trial date that had previously been continued at the defendant's request. In short, the plaintiff's right to have the matter determined has been delayed long after the time the action should have been concluded, under the expedited procedures applicable in unlawful detainer actions.

In the meantime, as the plaintiff points out, the defendant has had the benefit of over \$200,000, representing the surplus portion of the \$399,000 price the plaintiff paid at the foreclosure sale. Of that surplus, according to the order confirming the defendant's chapter 13 plan, \$134,723 went toward her IRS debt and \$79,261 went into the plan. The defendant had the opportunity to remove the action to this court 11 months ago; instead, she elected to create and take advantage of ongoing delays and removed the action only after the state court had denied her motion to quash. The court concludes the Notice of Removal represents a clear case of forum shopping on the part of the defendant and prolongs the prejudice to the plaintiff from the defendant's delaying tactics.

For the reasons stated, the court intends to grant the motion. The court will hear the matter.

11. 17-90479-D-13 JOSEPHINE GOMEZ  
PBG-4

MOTION TO MODIFY PLAN  
11-13-18 [122]

**Final ruling:**

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied because the moving party served the motion, notice of hearing, declaration, and memorandum of points and authorities, but not the plan itself, as required by LBR 3015-1(d) (2).

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

12. 18-90592-D-13 ROBERT/CECILIA CHATMAN  
SLH-1

MOTION TO CONFIRM PLAN  
10-29-18 [34]

**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.

13. 18-90506-D-13 ROBIN HAMADE-GAMMON  
BSH-2

CONTINUED MOTION TO CONFIRM  
PLAN  
10-22-18 [44]

**Final ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The hearing was continued to permit the moving party to file a corrected proof of service. The original did not sufficiently evidence the manner of service in that it did not state that the documents were placed in envelopes or that the envelopes were mailed with postage fully prepaid. The debtor's counsel was made aware of this defect in his form proof of service as early as August 28, 2018 in another case, yet the defect was repeated here.

Despite the continuance, the moving party has not filed a corrected proof of service. Accordingly, the motion will be denied for failure to sufficiently demonstrate that service was properly made. The motion will be denied by minute order. No appearance is necessary.

14. 18-90427-D-13 STEVEN/ELVIRA CISNEROS CONTINUED MOTION TO CONFIRM  
BSH-1 PLAN  
10-22-18 [36]

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The hearing was continued to permit the moving parties to file a corrected proof of service. The original did not sufficiently evidence the manner of service in that it did not state that the documents were placed in envelopes or that the envelopes were mailed with postage fully prepaid. The debtors' counsel was made aware of this defect in his form proof of service as early as August 28, 2018 in another case, yet the defect was repeated here.

Despite the continuance, the moving parties have not filed a corrected proof of service. Accordingly, the motion will be denied for failure to sufficiently demonstrate that service was properly made. The motion will be denied by minute order. No appearance is necessary.

15. 18-90653-D-13 RICARDO MARQUEZ CONTINUED OBJECTION TO  
RDG-1 CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
10-29-18 [14]

16. 18-90876-D-13 LEONARDO/MELISSA JOSEF MOTION TO EXTEND AUTOMATIC STAY  
PLG-1 12-4-18 [8]

17. 18-90881-D-13 CHRISTINA PHILLIPS MOTION FOR RELIEF FROM  
ADR-1 AUTOMATIC STAY AND/OR MOTION  
MAX HOUCK VS. FOR ADEQUATE PROTECTION  
11-30-18 [10]



18.	14-91185-D-13	DAVID/ESPERANZA HARRIS	CONTINUED MOTION TO MODIFY PLAN
	DCJ-3		10-22-18 [61]