

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

February 12, 2019 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.	18-26801-D-13	JASON/JOSEPHINE COMBS	OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
	RDG-2		12-21-18 [17]

Tentative ruling:

This is the trustee's objection to the debtors' claim of exemptions. The objection states the debtors have claimed clothing in the amount of \$1,000 as exempt under Cal. Code Civ. Proc. § 704.010, which is the code section for exemption of a debtor's interest in a motor vehicle. The court has examined the debtors' Schedule C and finds the debtors claimed clothing in the amount of \$600 under Cal. Code Civ. Proc. § 704.020. Thus, it appears the objection was filed in error and the court will overrule it. The court will hear the matter.

2. 18-25602-D-13 ERNIE HAYDEN
JMP-1
JPMORGAN CHASE BANK, N.A.
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
1-7-19 [24]

Final ruling:

Creditor, JPMorgan Chase Bank, N.A., is scheduled as a Class 4 creditor to be paid outside the plan, and an order confirming the plan has been entered in this case. The plan contains the language "Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) 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" If the debtor has defaulted under the plan, the stay has already been modified to allow this creditor to proceed with its rights against its collateral under the terms of the underlying loan and security documentation. Accordingly, the motion will be denied by minute order as unnecessary. No appearance is necessary.

3. 18-26202-D-13 MYRON SMITH
MJH-2

MOTION TO CONFIRM PLAN
12-27-18 [29]

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.

4. 18-27212-D-13 BIANCA JACKSON
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-7-19 [28]

Final ruling:

This case was dismissed on January 23, 2019. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

5. 18-27212-D-13 BIANCA JACKSON
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
1-7-19 [31]

Final ruling:

This case was dismissed on January 23, 2019. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

6. 17-28215-D-13 KAREN/DANIEL VIDA MOTION TO MODIFY PLAN
PSB-1 12-26-18 [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 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.

7. 18-27225-D-13 JEFFREY BECHTHOLD OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY TRUSTEE RUSSELL D.
GREER
1-7-19 [23]

8. 18-23028-D-13 TODD/ANGELA SANDMAN OBJECTION TO CLAIM OF VALLEY
RDG-1 FIRST CREDIT UNION, CLAIM
NUMBER 20
1-10-19 [27]

9. 18-21534-D-13 HECTOR/MARIA PEREZ MOTION TO CONFIRM PLAN
BSH-2 12-11-18 [67]

Final ruling:

This is the debtors' motion to confirm a first modified chapter 13 plan. The motion will be denied for the following reasons. First, there is no such plan on file. Instead, there are three different plans on file, all of them entitled simply "Chapter 13 Plan," such that the proof of service, which purports to evidence service of a "Proposed First Modified Chapter 13 Plan," is not sufficient to evidence which of the three plans was served. Second, the proof of service of the motion, original notice of hearing, declaration, and plan evidences service only on the chapter 13 trustee. The "Attached Matrix" referred to in the proof of service is not attached. Third, although the proof of service of the amended notice of hearing includes the attached matrix, it demonstrates that the moving parties failed

to serve the creditor requesting special notice at DN 59 at the designated address of its attorney and failed to serve the party requesting special notice at DN 12 at its complete designated address (the account number was omitted), as required by Fed. R. Bankr. P. 2002(g).

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

10. 18-21040-D-13 RAYFORD GRIFFIN MOTION TO AVOID LIEN OF CACH,
BSH-1 LLC
12-19-18 [51]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

11. 18-21040-D-13 RAYFORD GRIFFIN MOTION TO CONFIRM PLAN
BSH-3 12-19-18 [57]

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. First, there is no such plan on file. Instead, there are only a Chapter 13 Plan and a Chapter 13 Plan - First Amended on file, such that the proof of service, which purports to evidence service of a "Proposed Second Amended Chapter 13 Plan," is not sufficient to evidence what plan was filed. Second, the moving party failed to serve the creditor requesting special notice at DN 25 at its attorney's designated address, as required by Fed. R. Bankr. P. 2002(g).

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

12. 18-22841-D-13 PAUL/MARLYN JOY WINTER MOTION TO VALUE COLLATERAL OF
PGM-1 ADMIRALS BANK
12-30-18 [40]

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.

13. 16-22849-D-13 BRYAN/SONIA WATANABE MOTION TO INCUR DEBT
MC-2 1-8-19 [51]

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 incur debt is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order that has been signed off as to form by the Chapter 13 Trustee. No appearance is necessary.

14. 18-20855-D-13 WALTER/SHIRLEY SAUNDERS CONTINUED MOTION TO CONFIRM
TAG-2 PLAN
9-12-18 [107]

15. 18-21974-D-13 MOLICA SON CONTINUED MOTION FOR RELIEF
AP-1 FROM AUTOMATIC STAY AND/OR
WELLS FARGO BANK, N.A. VS. MOTION FOR RELIEF FROM
CO-DEBTOR STAY
11-5-18 [31]

16. 18-21974-D-13 MOLICA SON CONTINUED MOTION TO MODIFY PLAN
GMW-1 10-31-18 [26]

17. 18-25375-D-13 BENJAMIN/MARGARET AMENDED OBJECTION TO CLAIM OF
RDG-2 CONTRERAS LES SCHWAB TIRE CENTERS OF
CALIFORNIA, INC., CLAIM NUMBER
29
1-11-19 [27]
18. 18-24984-D-13 MIKE/OLIVIA BANUELOS CONTINUED MOTION TO CONFIRM
RKW-1 PLAN
10-3-18 [27]
19. 18-27184-D-13 MARTA HIGGINS OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
1-7-19 [14]
20. 18-27085-D-13 ANGELA EALY-HALE AND MOTION TO VALUE COLLATERAL OF
PGM-1 DONNIE HALE FINANCIAL CENTER CREDIT UNION
1-5-19 [16]

Tentative ruling:

This is the debtors' motion to value collateral of Financial Center Credit Union (the "Credit Union"), a 2015 Ford Transit XLT, at \$14,500. The Credit Union has filed opposition. For the following reasons, the motion will be denied.

The debtors' evidence consists of a declaration in which they testify that in their opinion, the retail value of the vehicle on the date of filing was \$14,500. They add that the vehicle has about 90,000 miles, is in poor condition, and has a broken windshield, a dent in the roof, bald tires, a ripped interior, and an engine

light that is on. The debtors state they formed their opinion of value by reviewing local newspapers, trade articles, and websites like Kelley Blue Book and NADA.

An owner of property may testify to his or her opinion of the value of that property, with limitations:

If testifying under [Fed. R. Evid.] 701, the owner may merely give his opinion based on his personal familiarity [with] the property, often based to a great extent on what he paid for the property. On the other hand, if he is truly an expert qualified under the terms of Rule 702 "by knowledge, skill, experience, training or education . . .," then he may also rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject . . ." pursuant to Rule 703. For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc.

2 Russell, Bankruptcy Evidence Manual § 701:2, pp. 784-85 (West 2012-2013 ed.).

Absent other evidence, the court would likely give sufficient weight to the debtors' testimony to grant the motion. The Credit Union, however, has submitted the declaration of an individual who has been a motor vehicle appraiser for five years and who has inspected the vehicle, together with a copy of her appraisal report and photographs. The appraisal report describes the vehicle as being in good condition with loose ceiling panels, a rock chip in the windshield, and a missing gas tank door. It adds that the tires and paint are in good condition. The appraiser testifies that in her opinion, the retail/replacement value of the vehicle is \$28,500. The court gives greater weight to the opinion of a professional vehicle appraiser than to the opinion of debtors with no apparent experience or expertise in valuing motor vehicles. The value of \$28,500 exceeds the amount of the Credit Union's claim, \$23,573, and the debtors have failed to carry their burden of demonstrating that the value of the vehicle is any amount less than that. Accordingly, the motion will be denied.

The court will hear the matter.

21.	18-27085-D-13	ANGELA EALY-HALE AND	OBJECTION TO CONFIRMATION OF
	RDG-1	DONNIE HALE	PLAN BY RUSSELL D. GREER
			1-7-19 [21]

22. 18-23696-D-13 JALEAIL NABIZADAH CONTINUED MOTION FOR RELIEF
CAS-1 FROM AUTOMATIC STAY
FINANCIAL SERVICES VEHICLE 12-20-18 [35]
TRUST VS.

23. 15-25997-D-13 AL GREEN OBJECTION TO CLAIM OF FV-1,
GS-1 INC., CLAIM NUMBER 15
12-15-18 [90]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the debtor's objection to FV-1, Inc.'s claim, Claim No. 15, has been filed and the objection is supported by the record. Accordingly, the court will sustain the debtor's objection to claim. Moving party is to submit an appropriate order. No appearance is necessary.

24. 16-27397-D-13 YOLANDA BURGIN CONTINUED MOTION TO MODIFY PLAN
PGM-6 11-1-18 [119]

25. 18-27004-D-13 MYRTIS MARTIN CONTINUED MOTION TO CONFIRM
HWW-1 PLAN
12-18-18 [20]

26. 19-20233-D-13 ALFONSO PULIDO MOTION TO EXTEND AUTOMATIC STAY
GMW-1 1-29-19 [15]

27. 18-25040-D-13 CARLA HUNT CONTINUED MOTION TO DISMISS
RDG-4 CASE
1-8-19 [72]

Final ruling:

This case was dismissed on January 29, 2019. As a result the motion will be denied by minute order as moot. No appearance is necessary.

28. 19-20248-D-13 VALERIE MARIN MOTION TO VALUE COLLATERAL OF
HWW-1 AMERICREDIT FINANCIAL SERVICES,
INC.
1-29-19 [14]

29. 19-20248-D-13 VALERIE MARIN MOTION TO EXTEND AUTOMATIC STAY
HWW-2 1-29-19 [18]

30. 18-26550-D-13 ANNA REYNOSO MOTION TO VALUE COLLATERAL OF
PLG-1 SANTANDER CONSUMER USA, INC.
1-18-19 [23]
31. 19-20350-D-13 LUIS CAVAZOS MOTION TO EXTEND AUTOMATIC STAY
MS-1 1-19-19 [8]
32. 19-20260-D-13 ANITA TROTTY MOTION FOR RELIEF FROM
NAR-1 AUTOMATIC STAY
MARY SHEN VS. 1-29-19 [11]
33. 14-30269-D-13 KEVIN DICKERSON AND MOTION TO INCUR DEBT
MC-3 SHELBY CABILES 1-29-19 [64]