

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

August 14, 2018 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.	18-90201-D-13	STEPHANIE NEHER	MOTION TO CONFIRM PLAN
	WLG-1		7-7-18 [56]

2.	14-90503-D-13	CARLOS/ARACELI MARTINEZ	MOTION TO MODIFY PLAN
	JAD-3		6-13-18 [77]

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.

3. 18-90408-D-13 ROGER HIEB OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
7-20-18 [14]

4. 18-90210-D-13 RANDALL/CYNTHIA BAHAM MOTION TO CONFIRM PLAN
GEL-1 7-9-18 [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 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.

5. 18-90412-D-13 LYNN HILL OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
7-20-18 [15]

6. 18-90416-D-13 JENNI/NICHOLAS DENT OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
7-20-18 [15]

7. 17-90823-D-13 JOSEPH/LISA ROBERTSON MOTION TO MODIFY PLAN
PLG-7 6-29-18 [83]

8. 18-90427-D-13 STEVEN/ELVIRA CISNEROS OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
7-20-18 [21]

9. 18-90429-D-13 BOBBY/DANIELLE WHATLEY OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
7-20-18 [16]

10. 17-91036-D-13 DEBORAH KIRKLE CONTINUED MOTION TO CONFIRM
DCJ-1 PLAN
5-31-18 [33]

11. 17-91036-D-13 DEBORAH KIRKLE CONTINUED MOTION TO VALUE
DCJ-2 COLLATERAL OF WALLACE MILLER
6-12-18 [43]

Final ruling:

Pursuant to the order entered on July 31, 2018, the hearing on this motion is continued by to September 4, 2018 at 10:00 a.m. No appearance is necessary on August 14, 2018.

12. 18-90253-D-13 ADRIANA ARROYO OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
7-20-18 [37]

13. 18-90154-D-13 EDWARD/KAREN WICKMAN MOTION TO INCUR DEBT
MRG-4 7-18-18 [72]

14. 15-91162-D-13 DAVID ANDERSON MOTION FOR RELIEF FROM
SSA-1 AUTOMATIC STAY AND/OR MOTION
LETICIA MARISCAL, ET AL. VS. FOR ADEQUATE PROTECTION
7-9-18 [52]

15. 18-90465-D-13 MARK/SHANNON CIMOLI
NLL-1
WELLS FARGO BANK, N.A. VS. MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
7-9-18 [15]
16. 17-90869-D-13 KAY PARKER
WW-3 CONTINUED MOTION TO CONFIRM
PLAN
6-5-18 [96]
17. 18-90169-D-13 DANNY/BECKY CALDWELL
RDG-4 OBJECTION TO CLAIM OF ANTERO
CAPITAL, LLC, CLAIM NUMBER 12
7-13-18 [46]
18. 18-90278-D-13 TIBURCIO/OLIVIA MENDOZA
RDG-1 CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-11-18 [15]

19. 15-91181-D-13 LARRY GRACE MOTION TO MODIFY PLAN
TLC-2 6-20-18 [30]

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.

20. 18-90083-D-13 MERCEDES HOLLOWAY CONTINUED MOTION TO CONFIRM
DCJ-3 PLAN
5-31-18 [60]

21. 18-90193-D-13 WILVER CESTONA MOTION TO CONFIRM PLAN
JAD-1 6-11-18 [19]

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.

22. 18-90393-D-13 DOMINGO CISNEROS AND OBJECTION TO CONFIRMATION OF
RDG-1 FELIPA VELAZQUEZ PLAN BY RUSSELL D. GREER
7-20-18 [13]

23. 18-90296-D-13 ROBERT/DEBORAH DAILEY MOTION FOR RELIEF FROM
JFL-1 AUTOMATIC STAY
SETERUS, INC. VS. 6-28-18 [18]

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 relief from stay. As the debtors' Chapter 13 Plan provides for a surrender of the subject property, the court will also waive FRBP 4001(a) (3) by minute order. There will be no further relief afforded. No appearance is necessary.

24. 18-90406-D-13 RICHARD/SABRINA SIDA OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER,
TRUSTEE
7-20-18 [18]

25. 18-90408-D-13 ROGER HIEB OBJECTION TO CONFIRMATION OF
CJO-1 PLAN BY BANK OF AMERICA, N.A.
7-24-18 [17]

26. 18-90409-D-13 SEEMA GOSAI OBJECTION TO CONFIRMATION OF
PPR-1 PLAN BY CONSUMERS CREDIT UNION
7-23-18 [16]

Tentative ruling:

This is the objection of Consumers Credit Union (the "Credit Union") to confirmation of the debtor's proposed chapter 13 plan. The debtor has filed opposition and the Credit Union has filed a reply. For the following reasons, the objection will be sustained.

The Credit Union raises two points. First, it objects to the treatment of its claim as a Class 2 claim for \$5,771 because the claim has two components - the balance owed on the debtor's car loan, \$5,582.95, and the balance due on a credit card, \$2,403.69, for a total of \$7,986.64. The Credit Union cites its security agreement, which provides that the security interest granted thereby secures not only the car loan but any other loans, including credit card loans.

The debtor does not dispute that both loans are secured by her vehicle, pursuant to the security agreement. She also does not dispute that the value of the vehicle, which she scheduled as \$11,821, is sufficient to cover both loans. Instead, she contends that since the plan proposes a dividend of 100% plus interest on general unsecured claims, and since she included the amount of the credit card loan in the total of general unsecured claims to be paid through the plan, the end result of the plan will be the same as if she had included both loans in the Class 2 claim; that is, the secured claim.

The Credit Union correctly replies that the debtor's treatment of the two claims does not reflect the reality of the claims, that confirmation of the plan will bind both parties to the treatment provided for the claims, and that the result will not be the same for the Credit Union if the debtor does not complete the plan. For these reasons, the plan does not comply with § 1325(a)(5) of the Code.

The Credit Union also objects to the provision that it will receive monthly payments on its Class 2 claim at \$150 for six months, increasing to \$650 after the debtor's attorney's fees have been paid in full. The debtor responds that this payment schedule will result in the Credit Union's claims being paid in full sooner than the original maturity date. On its face, the plan does not comply with the requirement of § 1325(a)(5)(B)(iii)(I) that periodic payments be in equal monthly amounts. The objection will be sustained on that basis as well.

For the reasons stated, the objection will be sustained. The court will hear the matter.

27. 18-90430-D-13 VINCENT COLMORE AND MOTION TO VALUE COLLATERAL OF
JAD-1 ABANEATHA BISBEE COLMORE GATEWAY ONE LENDING & FINANCE, LLC
7-25-18 [18]

Tentative ruling:

This is the debtors' motion to value collateral of Gateway One Lending & Finance, LLC ("Gateway"), a 2013 Chevrolet Camaro. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The motion will be denied because the moving parties have failed to demonstrate they are entitled to the relief requested, as required by LBR 9014-1(d)(3)(D). The motion and supporting declaration both state that the "value" of the vehicle is \$11,635, "as substantiated by a valuation from Kelley Blue Book" The Kelley Blue Book printout filed as an exhibit is for the private party value. There is no mention in the motion or declaration of the vehicle's "replacement value," which is the standard by which the court is to assess its value (Bankruptcy Code § 506(a)(2)), and the debtors have failed to demonstrate that the replacement value is \$11,635 or any other value less than the amount due Gateway, which, according to the debtors, is \$17,960. The debtors have offered no reason for the court to conclude that the price a private party seller would charge is the same price a retail merchant would charge.

Courts within the Ninth Circuit favor the retail value over the private party value as the appropriate starting point for determining replacement value.¹ The

debtors have failed to demonstrate that the private party value, as opposed to the retail merchant value, more closely approximates the replacement value of the vehicle.

For the reasons stated, the motion will be denied. The court will hear the matter.

1 See In re Araujo, 464 B.R. 15, 19 (Bankr. N.D. Cal. 2011); In re Morales, 387 B.R. 36, 46 (Bankr. C.D. Cal. 2008).

28. 18-90430-D-13 VINCENT COLMORE AND MOTION TO VALUE COLLATERAL OF
JAD-2 ABANEATHA BISBEE COLMORE ONEMAIN FINANCIAL SERVICES, INC.
7-25-18 [23]

Tentative ruling:

This is the debtors' motion to value collateral of OneMain Financial Services, Inc. ("OneMain"), a 2007 Chevrolet Monte Carlo. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The motion will be denied because the moving parties have failed to demonstrate they are entitled to the relief requested, as required by LBR 9014-1(d)(3)(D). The motion and supporting declaration both state that the "value" of the vehicle is \$1,844, "as substantiated by a valuation from Kelley Blue Book" The Kelley Blue Book printout filed as an exhibit is for the private party value. There is no mention in the motion or declaration of the vehicle's "replacement value," which is the standard by which the court is to assess its value (Bankruptcy Code § 506(a)(2)), and the debtors have failed to demonstrate that the replacement value is \$1,844 or any other value less than the amount due OneMain, which, according to its proof of claim, is \$11,182. The debtors have offered no reason for the court to conclude that the price a private party seller would charge is the same price a retail merchant would charge.

Courts within the Ninth Circuit favor the retail value over the private party value as the appropriate starting point for determining replacement value.¹ The debtors have failed to demonstrate that the private party value, as opposed to the retail merchant value, more closely approximates the replacement value of the vehicle.

For the reasons stated, the motion will be denied. The court will hear the matter.

1 See In re Araujo, 464 B.R. 15, 19 (Bankr. N.D. Cal. 2011); In re Morales, 387 B.R. 36, 46 (Bankr. C.D. Cal. 2008).