

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

January 2, 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.	<a href="#">15-28202</a> -D-13	STEVE/SARA LOPEZ	MOTION TO APPROVE LOAN MODIFICATION 11-20-17 [ <a href="#">63</a> ]
	<a href="#">RAC</a> -4		

2.	<a href="#">17-24412</a> -D-13	JEANINE DAVIS	MOTION TO CONFIRM PLAN 11-17-17 [ <a href="#">54</a> ]
	<a href="#">PGM</a> -1		

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The moving party failed to serve (1) Honest Auto Sales, listed on her Schedule D; (2) Comcast, listed on Schedule E/F; and (3) John

Sharper, listed on Schedule H as the debtor's co-debtor on her mortgage loan. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes parties who are co-debtors on debts of the debtor. In addition, the debtor has failed to comply with Fed. R. Bankr. P. 1007(a)(1), which requires debtors to include on their master address the names and addresses of all parties included or to be included on their schedules, including Schedule H.

As a result of these service defects, the motion will be denied and the court need not consider the oppositions raised by the Castaneda Family Trust and the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

3. [17-24412](#)-D-13      JEANINE DAVIS      MOTION FOR COMPENSATION FOR  
[SSA](#)-3      STEVEN S. ALTMAN, CREDITOR'S  
ATTORNEY  
12-8-17 [[70](#)]

4. [17-24626](#)-D-13      VICTOR/GLORIA LUERA      MOTION TO CONFIRM PLAN  
[MKM](#)-3      11-8-17 [[66](#)]

**Final ruling:**

This case was dismissed on November 27, 2017. As a result the motion will be denied by minute order as moot. No appearance is necessary.

5. [17-21930](#)-D-13      FERGUS/KAREN MCDUGALL      OBJECTION TO CLAIM OF TROJAN  
[JCK](#)-6      CAPITAL INVESTMENTS,  
LLC/NATIONAL CITY BANK, CLAIM  
NUMBER 5  
11-8-17 [[86](#)]

**Final ruling:**

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the debtors' objection to claim no. 5. No appearance is necessary.

6. [17-21930](#)-D-13      FERGUS/KAREN MCDUGALL      OBJECTION TO CLAIM OF AMERICAN  
[JCK](#)-7      EDUCATION SERVICES, CLAIM

**Final ruling:**

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the debtors' objection to claim no. 6. No appearance is necessary.

7. [17-26637](#)-D-13 JESSE/CHRISTINA M. LOPEZ OBJECTION TO CONFIRMATION OF  
[RDG](#)-1 PLAN BY RUSSELL D. GREER  
12-4-17 [[25](#)]

**Final ruling:**

This is the objection of the Chapter 13 Trustee to confirmation of the debtors' chapter 13 plan. On December 23, 2017, the debtors filed a first amended plan. As a result of the filing of the first amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

8. [17-23238](#)-D-13 LAURIE CROSBY-WILSON MOTION TO MODIFY PLAN  
[JCK](#)-7 11-27-17 [[81](#)]

**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.

9. [16-21940](#)-D-13 JUAN/KIMBERLY MARTINEZ CONTINUED MOTION TO MODIFY PLAN  
[PGM](#)-2 10-31-17 [[41](#)]

10. [16-27943](#)-D-13 DARLENE COBB MOTION TO MODIFY PLAN  
[JCK](#)-1 11-17-17 [[26](#)]
11. [17-26044](#)-D-13 CAROLL THOMPSON MOTION TO CONFIRM PLAN  
[CLT](#)-1 12-1-17 [[44](#)]
12. [10-44047](#)-D-13 AARON AUTEN AND SUNDUS MOTION TO AVOID LIEN OF  
[MS](#)-1 YAMIN-AUTEN AMERICAN EXPRESS BANK, FSB  
11-22-17 [[91](#)]

**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 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, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

13. [17-21752](#)-D-13 RICHARD/JENE ROSE SAMSON MOTION TO CONFIRM PLAN  
[MJD](#)-3 11-9-17 [[63](#)]

**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.

14. [17-26853](#)-D-13      HERNANY/FELICITAS      MOTION TO VALUE COLLATERAL OF  
[HWW](#)-1      FERNANDEZ      LENDMARK FINANCIAL SERVICES,  
LLC  
12-4-17 [[24](#)]

**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.

15. [17-26853](#)-D-13      HERNANY/FELICITAS      OBJECTION TO CONFIRMATION OF  
[RDG](#)-1      FERNANDEZ      PLAN BY RUSSELL D. GREER  
12-4-17 [[21](#)]

16. [17-27554](#)-D-13      JASMEL/AMRIT SINGH      MOTION TO VALUE COLLATERAL OF  
[AF](#)-1           CAPITAL ONE AUTO FINANCE  
11-29-17 [[10](#)]

**Tentative ruling:**

This is the debtors' motion to value collateral of Capital One Auto Finance ("Capital One"), a 2013 Honda CR-V, at \$10,500. Capital One has filed opposition. The motion will be denied because the moving parties have not demonstrated they are entitled to the relief requested, as required by LBR 9014-1(d)(3)(D). The moving papers do not indicate when the debtors purchased the vehicle, and where required on their Schedule D to state the date the debt was incurred, the debtors left the answer blank.

Capital One has submitted a copy of the Retail Installment Sale Contract by which the debtors purchased the vehicle (the "contract")<sup>1</sup> - it is dated April 16, 2016, well within the 910 days prior to the date of filing of their petition, November 16, 2017. Further, the contract demonstrates Capital One holds a purchase money security interest in the vehicle, and as the debtors are both employed by others and have been since before they purchased the vehicle, and have not operated a business in the four years prior to the filing (per their Statement of Financial Affairs), it appears the vehicle was purchased for the debtors' personal use. Accordingly, under the hanging paragraph following § 1325(a)(9) of the Bankruptcy Code, the debtors are not entitled to value the collateral at anything less than the full amount of the claim, \$15,728.26, and the motion will be denied.

The court will hear the matter.

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- 1 Capital One filed an unauthenticated copy of the contract with its opposition to this motion. However, it also filed a copy as an attachment to its proof of claim, which constitutes prima facie evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). In any event, the burden of proof on this motion is on the debtors, who have not met it.

17. [17-26662](#)-D-13 KATHERINE SOUZA OBJECTION TO CONFIRMATION OF  
[RDG](#)-2 PLAN BY RUSSELL D. GREER  
12-4-17 [[43](#)]

Final ruling:

This is the objection of the Chapter 13 Trustee to confirmation of the debtor's chapter 13 plan. On December 27, 2017, the debtor filed a first amended plan and a motion to confirm it, set for hearing on February 13, 2018. As a result of the filing of the first amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

18. [17-27468](#)-D-13 RYAN KLASSEN MOTION TO VALUE COLLATERAL OF  
[JCK](#)-1 NISSAN MOTOR ACCEPTANCE  
CORPORATION  
11-20-17 [[8](#)]

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.

19. [17-25374](#)-D-13 RICKY CLEARY AND KIM MOTION TO CONFIRM PLAN  
[RWF](#)-3 PHUONG NGUYEN-CLEARY 11-15-17 [[45](#)]

**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. [16-24977](#)-D-13 JOSHUA/TONI HIATT MOTION TO MODIFY PLAN  
[JAD](#)-2 11-17-17 [[52](#)]

21. [17-26777](#)-D-13 MARLENE DOUGLAS OBJECTION TO CONFIRMATION OF  
[RDG](#)-1 PLAN BY RUSSELL D. GREER  
12-4-17 [[32](#)]

22. [17-26592](#)-D-13 JAMES/CHRISTINE BLOCH MOTION TO VALUE COLLATERAL OF  
[HWW](#)-2 WESTLAKE SERVICES, LLC  
12-5-17 [[22](#)]

**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.

23. [17-26696](#)-D-13      APRIL GIANELLI      MOTION FOR RELIEF FROM  
[GMF](#)-1      AUTOMATIC STAY  
GARY FONSECA VS.      12-4-17 [[35](#)]
24. [17-26696](#)-D-13      APRIL GIANELLI      OBJECTION TO CONFIRMATION OF  
[RDG](#)-1      PLAN BY RUSSELL D. GREER  
      12-4-17 [[32](#)]
25. [15-26928](#)-D-13      DAN/KIMBERLEE FRASER      MOTION TO INCUR DEBT  
[JCK](#)-5      12-14-17 [[84](#)]
26. [17-23333](#)-D-13      SONIA MCDADE-THREADGILL      CONTINUED MOTION TO CONFIRM  
[PGM](#)-4      PLAN  
      11-7-17 [[79](#)]



27. [16-26868](#)-D-13      MARILYN GLORIA  
[RDG](#)-2

CONTINUED MOTION TO DISMISS  
CASE  
11-6-17 [[32](#)]