

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Modesto, California

**January 9, 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.	17-90400-D-13	JAMELIA ROBINSON	CONTINUED MOTION TO MODIFY PLAN
	PLG-1		11-7-17 [17]

2.	16-90304-D-13	JOHN DEMING	MOTION FOR RELIEF FROM
	JHW-4		AUTOMATIC STAY
	MERCEDES-BENZ FINANCIAL		11-21-17 [214]
	SERVICES USA, LLC VS.		

**Final ruling:**

**This matter is resolved without oral argument. This is Mercedes-Benz Financial Services USA, LLC's motion for relief from automatic stay. The court's records**

indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

3. 17-90818-D-13 LISA GARCIA  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
12-4-17 [35]

**Final ruling:**

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. On December 15, 2017, the debtor filed an amended plan and a motion to confirm it. As a result of the filing of the amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

4. 17-90820-D-13 SANDRA NARANJO  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
12-4-17 [27]

5. 17-90823-D-13 JOSEPH/LISA ROBERTSON  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
12-4-17 [20]

**Final ruling:**

This is the objection of the Chapter 13 Trustee to confirmation of the debtors' chapter 13 plan. On January 3, 2018, 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.

6. 17-90824-D-13 ARTEMIO PALACIOS GONZALEZ  
NLL-1 AND LETICIA BARRERA  
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-17-17 [19]

**DEBTOR DISMISSED:**

**12/19/2017**

**JOINT DEBTOR DISMISSED:**

**12/19/2017**

**Final ruling:**

The hearing on this motion is continued to January 23, 2018 at 10:00 a.m. No appearance is necessary on January 9, 2018.

7. 17-90824-D-13 ARTEMIO PALACIOS GONZALEZ OBJECTION TO CONFIRMATION OF  
RDG-2 AND LETICIA BARRERA PLAN BY RUSSELL D. GREER  
12-4-17 [29]

**Final ruling:**

This case was dismissed on December 19, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

8. 17-90731-D-13 CHARLOTTE LOCKARD MOTION TO CONFIRM PLAN  
MCC-6 11-13-17 [34]

**Final ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons. First, the proof of service is inaccurate. It states that service was made on September 19, 2017, whereas the moving papers were not signed until November 10, 2017 and the amended plan was not signed until November 8, 2017. Further, the proof of service references service of a "plan," whereas there have been two different plans filed in this case; the one that is the subject of this motion is entitled Chapter 13 Plan - 1st Amended. The proof of service does not evidence service of the amended plan.

Second, the moving party failed to serve the creditor that filed Claim No. 2 - the debtor's mortgage lender - at the address on its proof of claim, as required by Fed. R. Bankr. P. 2002(g), although the proof of claim was filed a month before the motion was served. Finally, the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b), in that the moving party failed to serve the party listed on Schedule G as the party to an executory contract. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," an interpretation that includes parties to executory contracts with the debtor.

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

9. 17-90539-D-13 EDUARDO ROCHA CONTINUED MOTION TO CONFIRM  
MSN-1 PLAN  
9-14-17 [31]

**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.

10. 16-90342-D-13 NIKOLAY/LILIA GERASIMCHUK MOTION TO MODIFY PLAN  
TLC-2 11-17-17 [38]
11. 14-91544-D-13 REID LANTRIP MOTION TO MODIFY PLAN  
PLG-1 11-30-17 [24]
12. 17-90451-D-13 MARK/SHANNON CIMOLI MOTION TO CONFIRM PLAN  
MDA-3 11-25-17 [67]
13. 17-90451-D-13 MARK/SHANNON CIMOLI MOTION TO AVOID LIEN OF LOANME,  
MDA-4 INC.  
12-11-17 [79]

**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.

14. 17-90153-D-13 JASON UNDERWOOD  
PSB-3

MOTION TO MODIFY PLAN  
11-1-17 [62]

**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.

15. 17-90956-D-13 JOSE/OLIVIA VALENCIA  
TOG-1

MOTION TO VALUE COLLATERAL OF  
DITECH  
12-4-17 [8]

**Final ruling:**

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Ditech at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. 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 set the amount of Ditech's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

16. 17-90460-D-13 SANTIAGO/GODELEVA  
TOG-2 GUTIERREZ

CONTINUED MOTION TO VALUE  
COLLATERAL OF TOYOTA MOTOR  
CREDIT CORPORATION  
10-11-17 [45]

**Tentative ruling:**

This is the debtors' motion to value collateral of Toyota Motor Credit Corporation ("Toyota"); namely, a 2011 Toyota Camry (the "vehicle"). Toyota filed opposition and the hearing was continued for either party to supplement the record. Neither party has done so. Therefore, for the following reason, the court intends to deny the motion.

The motion is supported by the declaration of debtor Santiago Gutierrez, who testifies, "I believe the replacement value is \$5,729 i.e., a retail merchant would sell this vehicle for the above amount based on the age and condition of said vehicle." Debtor's Declaration, DN 47, ¶ 4. In contrast, Toyota has submitted an NADA Used Car Guide printout for a similar vehicle showing, after application of an adjustment for the mileage claimed by the debtors, a clean retail value of \$11,800. Given that value, and with no explanation of the discrepancy between it and the debtors' lower valuation, the court concludes the debtors have failed to meet their burden of proving that the replacement value of the vehicle is \$5,729 and the motion will be denied. The court notes that the debtors have set a hearing for January 23, 2018 on a motion to confirm an amended plan that provides for Toyota's secured claim in the amount of \$11,330, so it appears the parties may have reached a settlement. However, the parties have not submitted a stipulation and proposed order to the court, as the court suggested at the initial hearing would be appropriate.

The court will hear the matter.

17. 17-90963-D-13 ERICK AVILA  
JAD-1

MOTION TO VALUE COLLATERAL OF  
TOYOTA MOTOR CREDIT CORPORATION  
11-30-17 [10]

**Tentative ruling:**

This is the debtor's motion to value the collateral of Toyota Motor Credit Corporation ("Toyota"), a 2014 Toyota Camry. Toyota has filed opposition. For the following reasons, the motion will be denied.

In support of the motion, the debtor testifies the value of the vehicle is \$11,163 based upon a Kelley Blue Book ("KBB") valuation. The debtor refers to a KBB printout, filed as an exhibit, showing a "private party range" of \$9,734 to \$11,701 and a "private party value" of \$11,163. The debtor has failed to demonstrate that the KBB private party value equates to the "replacement value" of the vehicle; that is, "the price a retail merchant would charge for property of that kind considering the age and condition of the property," which is the applicable standard. § 506(a)(2).

Toyota, on the other hand, has filed an NADA Used Car Guide printout showing a "clean retail" value of \$15,475, and has added another \$1,470.86 which Toyota says represents the "cost of the optional GAP and Service Contracts (executory contracts) financed during the initial purchase transaction." Toyota's Opp., DN 27, at 2:22-24. The court need not determine whether the replacement value of the vehicle is \$15,475, \$16,945.86 as Toyota suggests, or some other figure. This is the debtor's motion and the debtor has failed to satisfy his burden of proof. Accordingly, the motion will be denied.

The court will hear the matter.

18. 17-90564-D-13 DANIEL/GERARDEE DONNAN  
JAD-2

MOTION TO CONFIRM PLAN  
11-9-17 [27]

19. 17-90466-D-13 DAVID/DEANNA ROLLER  
GEL-1

MOTION TO CONFIRM PLAN  
11-22-17 [52]

20. 15-90869-D-13 LEONARDO/MELISSA JOSEF CONTINUED MOTION TO MODIFY  
PLAN  
PLG-2 11-2-17 [37]

21. 17-90472-D-13 CONSUELO ORTEGA CONTINUED MOTION TO VALUE  
TOG-4 COLLATERAL OF SANTANDER  
CONSUMER USA, INC.  
11-14-17 [99]

**Final ruling:**

**This motion has been resolved by stipulation which has been approved by order filed December 7, 2017. The matter is removed from calendar.**

22. 17-90472-D-13 CONSUELO ORTEGA MOTION TO CONFIRM PLAN  
TOG-5 11-28-17 [109]

**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.**

23. 17-90575-D-13 JAMES DUNN, AND NORMA MOTION TO CONFIRM PLAN  
DEF-2 DUNN 10-27-17 [73]

24. 14-90477-D-13 BONI CORDOVA-GRIMALDI MOTION TO MODIFY PLAN  
MJD-1 11-21-17 [96]

**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.

25. 17-90479-D-13 JOSEPHINE GOMEZ MOTION FOR RELIEF FROM  
MDE-1 AUTOMATIC STAY  
U.S. BANK, N.A. VS. 11-21-17 [34]

**Final ruling:**

This matter is resolved without oral argument. This is U.S. Bank, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that the creditor's interest in the subject property is not adequately protected. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

26. 17-90783-D-13 TERRY KRONHOLM OBJECTION TO DEBTOR'S CLAIM  
RDG-2 OF EXEMPTIONS  
11-20-17 [38]

**Final ruling:**

This is the trustee's objection to the debtor's claims of exemptions. On November 28, 2017, the debtor filed an amended Schedule C. As a result of the filing of the amended Schedule C, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

27. 12-92493-D-13 JEFFREY/JENNIFER LUCK OBJECTION TO CLAIM OF GRANT  
JAD-1 WEBER, CLAIM NUMBER 8  
11-3-17 [36]

**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 the claim of Grant Weber, Claim No. 8. No appearance is necessary.



28. 17-90794-D-13 RUBEN ALVAREZ  
PLG-1

MOTION TO CONFIRM PLAN  
11-21-17 [21]

**Final ruling:**

This is the debtor's motion to confirm a first amended chapter 13 plan. On December 26, 2017, the debtor filed a second amended plan and a motion to confirm it. 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.

29. 17-90900-D-13 CATHERINE DANTAY  
MC-1

MOTION TO VALUE COLLATERAL OF  
EXETER FINANCE CORP.  
12-18-17 [20]

30. 17-91007-D-13 JOANN LOPES  
JAD-1

MOTION TO EXTEND AUTOMATIC  
STAY  
12-19-17 [8]

31. 16-90160-D-13 ISAAC GUZMAN  
MSN-1

MOTION TO INCUR DEBT  
12-15-17 [67]

32. 17-90871-D-13 MANUEL OLIVARES AND OBJECTION TO CONFIRMATION OF  
RDG-1 AGRIPINA YEPEZ PLAN BY RUSSELL D. GREER  
12-18-17 [34]

**Final ruling:**

The debtors filed a statement of non-opposition to the Chapter 13 Trustee's objection to confirmation. As a result the objection will be sustain by minute order. No appearance is necessary.

33. 17-90871-D-13 MANUEL OLIVARES AND OBJECTION TO CONFIRMATION OF  
APN-1 AGRIPINA YEPEZ PLAN BY WELLS FARGO BANK,  
N.A.  
12-19-17 [37]

**Final ruling:**

The debtors filed a statement of non-opposition to Wells Fargo Bank, N.A.'s objection to confirmation. As a result the objection will be sustain by minute order. No appearance is necessary.