

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

April 4, 2017 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.	14-91400-D-13	JERROLD/SHARON BUER	MOTION TO MODIFY PLAN
	CJY-4		2-15-17 [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.

2. 17-90103-D-13 KAREN KIRKMAN
CJY-1

MOTION TO VALUE COLLATERAL OF
CAPITAL ONE AUTO FINANCE
2-23-17 [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.

3. 16-90304-D-13 JOHN DEMING
DCJ-5

MOTION TO CONFIRM PLAN
2-15-17 [109]

4. 17-90104-D-13 KELLY/JUDITH OLIVER
CJY-1

MOTION TO VALUE COLLATERAL OF
ALLY FINANCIAL
2-23-17 [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.

5. 16-90512-D-13 MITCHEL/DAWN FRIDAY
ALF-3

MOTION TO APPROVE LOAN
MODIFICATION
3-3-17 [47]

6. 11-94115-D-13 OSCAR/YOLANDA BENITEZ MOTION TO VALUE COLLATERAL OF
CJY-2 JP MORGAN CHASE BANK, N.A.
3-3-17 [56]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of JPMorgan Chase Bank, N.A. 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 JPMorgan Chase Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

7. 16-90219-D-13 SHARON HAMILTON MOTION TO CONFIRM PLAN
DCJ-2 2-20-17 [69]

8. 16-91029-D-13 WENDELL AKENS MOTION TO CONFIRM PLAN
DEF-2 2-15-17 [35]

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. 16-90935-D-13 ANTONIO LOA AND CHRISTY MOTION TO CONFIRM PLAN
MJD-2 RAMIREZ 2-15-17 [64]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) there is no proof of service of the motion, notice of hearing, declaration, exhibits, and plan (although there is a proof of service of a notice of errata to the declaration, along with supplemental exhibits); (2) for service of the notice of errata and supplemental exhibits, the moving parties used an outdated PACER matrix and thus failed to serve the parties requesting special notice at DNs 70 and 71 at their designated addresses; and (3) for the notice of errata and supplemental exhibits, the moving parties failed to serve the Franchise Tax Board and the U.S. Dept. of Housing and Urban Development at their addresses on the Roster of Governmental Agencies, as required by LBR 2002-1.

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

10. 10-91250-D-13 LYNNE GRAY
15-9058 AP-1
GRAY V. RUSHMORE LOAN
MANAGEMENT SERVICES ET AL

MOTION TO DISMISS ADVERSARY
PROCEEDING
3-2-17 [51]

Final ruling:

This is the motion of Rushmore Loan Management Services LLC ("Rushmore") to dismiss the plaintiff's complaint. On March 20, 2017, Rushmore's co-defendant, Bank of America, filed a notice of joinder and joinder in Rushmore's motion to dismiss. On March 23, 2017, the plaintiff and Rushmore filed a stipulation pursuant to which the plaintiff dismissed Rushmore from the adversary proceeding with prejudice and Rushmore withdrew its motion to dismiss without prejudice. The stipulation also provided that the hearing on Rushmore's motion to dismiss would be vacated. On March 23, 2017, the court entered an order approving the stipulation, dismissing Rushmore from the adversary proceeding with prejudice, and vacating the hearing on Rushmore's motion. As the motion has been withdrawn by the moving party, as approved by the court, and the hearing has been vacated, the court will not hear Bank of America's joinder. The court's minutes will reflect that the motion was withdrawn by the moving party. No appearance is necessary.

11. 15-90060-D-13 TROY/DEBORAH EDWARDS
NLG-1
SETERUS, INC. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
2-22-17 [33]

Final ruling:

Creditor, Seterus, Inc., 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 "Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of its loan or security documentation provided this case is pending under Chapter 13." If the debtors have 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.

12. 12-90362-D-13 HENRY/LENA SCHUCHTERMAN
CJY-6

MOTION TO MODIFY PLAN
2-24-17 [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.

13. 14-91070-D-13 HARVEY/KIMIKO HENDRIX MOTION TO MODIFY PLAN
MJD-2 2-20-17 [90]

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. 15-90481-D-13 JOSE/MENDY SOLANO CONTINUED MOTION TO MODIFY PLAN
JAD-1 1-12-17 [28]

15. 16-90584-D-13 MANUEL OLIVARES AND MOTION TO CONFIRM PLAN
TOG-2 AGRIPINA YEPEZ 2-7-17 [68]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The trustee and Wells Fargo Bank (the "Bank") have filed opposition. For the following reasons, the motion will be denied.

First, the moving parties failed to serve Adriana Olivares, listed on their Schedule H as a co-debtor; thus, they have failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). 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 co-debtors on obligations of the debtors. See also Fed. R. Bankr. P. 1007(a)(1).

Second, the debtors have failed to comply with LBR 3015-1(j) and have failed to satisfy their burden of demonstrating that the plan is feasible and that it is proposed in good faith. In July of 2016, the debtors filed a motion to value the Bank's collateral; namely, a second position deed of trust against the debtors' residence. The motion was granted by minute order filed August 17, 2016. However, that order was vacated on the Bank's motion for reconsideration, granted December 7, 2016. Yet the proposed amended plan fails to provide for the Bank's second in any way. As the debtors have failed to obtain an order valuing the Bank's collateral, as required by LBR 3015-1(j), and as the plan fails to otherwise provide for the Bank's claim, the plan does not comply with § 1325(a)(5) of the Code, is not feasible, and appears to have been proposed solely for the purpose of delay.

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

Tentative ruling:

This is the debtor's motion to value collateral of Mercedes-Benz Financial Services USA LLC ("Mercedes-Benz"); namely, a 2015 Mercedes-Benz Sprinter cargo van. Mercedes-Benz has filed opposition. For the following reasons, the motion will be denied. In the alternative, the court will continue the hearing to permit the parties to supplement the evidentiary record and to file supplemental briefs.

The debtor testifies that in his opinion, the value of the vehicle is \$22,000, a value he determined by (1) checking its KBB valuation and looking at similar vehicles for sale in "this area," as listed on the KBB website; (2) looking at Craigslist ads for similar vehicles in the Modesto/Merced area; (3) obtaining an opinion of value from the local Mercedes-Benz dealership; and (4) using his knowledge of similar vehicles, "having purchased many in the several decades for [his] business." Debtor's Decl., DN 126 ("Decl."), at 2:7-8. The debtor did not submit a copy of a KBB printout or copies of the ads he looked at and did not disclose the dealer's opinion of value.

Mercedes-Benz, on the other hand, submitted a NADA printout for a similar vehicle showing, after application of a mileage adjustment, a wholesale value of \$32,260, a loan value of \$29,110, and a retail value of \$38,435. Given these values, and with no explanation of the discrepancies between them and the debtor's much lower valuation, the court concludes the debtor has failed to meet his burden of proving that the replacement value (see below) of the vehicle is \$22,000. However, although Mercedes-Benz asks that the motion be denied, it also suggests the debtor should start with the KBB or NADA retail value and provide evidence of the condition of the vehicle, including the cost of necessary repairs, if any. Mercedes-Benz also requests the debtor make the vehicle available for inspection and valuation. Thus, the court will continue the hearing and allow both parties to supplement the evidentiary record, as well as their argument and authorities, if they wish to do so.

The debtor will also need to indicate what he believes to be the standard the court should apply in determining value. The debtor contends the vehicle was not purchased for personal use - he does this for the purpose of taking the vehicle outside the one-year lookback period under the hanging paragraph that follows § 1325(a)(9) of the Code. (The debtor purchased the vehicle one year and five days before he filed his bankruptcy petition.) Mercedes-Benz does not contend the 910-day lookback period applies; that is, it does not contend the vehicle cannot be valued at all. It does, however, argue that the applicable standard is "the price a retail merchant would charge" for a similar vehicle considering the age and condition of the debtor's vehicle. Thus, Mercedes-Benz would use the "replacement value" of a vehicle "acquired for personal, family, or household purposes," as set forth in the second sentence of § 506(a)(2). The debtor, on the other hand, simply uses the term "value." He does not suggest the applicable standard is the "replacement value" of a vehicle not purchased for personal, family, or household use, as set forth in the first sentence of § 506(a)(2), and he does not provide any authority for the appropriate definition of that term.

For the reasons stated, if the debtor wishes to supplement the record, the court will continue the hearing and will give Mercedes-Benz an opportunity to do so as well. The debtor will also need to make the vehicle available to Mercedes-Benz. If the debtor does not wish to supplement the record, the motion will be denied. The court will hear the matter.

Tentative ruling:

This is the debtor's motion to value collateral of Mercedes-Benz Financial Services USA LLC ("Mercedes-Benz"); namely, a 2012 Mercedes-Benz CLS. Mercedes-Benz has filed opposition. For the following reasons, the motion will be denied. In the alternative, the court will continue the hearing to permit the parties to supplement the evidentiary record and to file supplemental briefs.

The debtor testifies that in his opinion, the value of the vehicle is \$18,000, a value he determined by (1) checking its KBB valuation and looking at similar vehicles for sale in "this area," as listed on the KBB website; (2) looking at Craigslist ads for similar vehicles in the Modesto/Merced area; (3) obtaining an opinion of value from the local Mercedes-Benz dealership; and (4) using his knowledge of similar vehicles, "having purchased many of them over the years." Debtor's Decl., DN 130, at 2:7-8. The debtor did not submit a copy of a KBB printout or copies of the ads he looked at and did not disclose the dealer's opinion of value. It is undisputed that the vehicle was purchased for the debtor's personal use.

Mercedes-Benz, on the other hand, submitted a NADA printout for a similar vehicle showing, after application of a mileage adjustment, a rough trade-in value of \$28,600, an average trade-in value of \$31,700, and a clean trade-in value of \$34,300. The printout also shows a "clean loan" value of \$30,750 and a "clean retail" value of \$37,800. Given these values, and with no explanation of the discrepancies between them and the debtor's much lower valuation, the court concludes the debtor has failed to meet his burden of proving that the replacement value of the vehicle; that is, the price a retail merchant would charge for a similar vehicle considering the age and condition of the debtor's vehicle, is \$18,000. However, although Mercedes-Benz asks that the motion be denied, it also suggests the debtor should start with the KBB or NADA retail value and provide evidence of the condition of the vehicle, including the cost of necessary repairs, if any. Mercedes-Benz also requests the debtor make the vehicle available for inspection and valuation. Thus, the court will continue the hearing and allow both parties to supplement the evidentiary record, as well as their argument and authorities, if they wish to do so.

For the reasons stated, if the debtor wishes to supplement the record, the court will continue the hearing and will give Mercedes-Benz an opportunity to do so as well. The debtor will also need to make the vehicle available to Mercedes-Benz. If the debtor does not wish to supplement the record, the motion will be denied. The court will hear the matter.

18. 11-94222-D-13 SHELLEY SHAHEN CONTINUED MOTION TO MODIFY PLAN
DCJ-6 7-5-16 [107]
19. 11-94222-D-13 SHELLEY SHAHEN CONTINUED OBJECTION TO CLAIM OF
DCJ-7 DEPARTMENT OF THE TREASURY -
INTERNAL REVENUE SERVICE, CLAIM
NUMBER 12
2-5-17 [123]

20. 17-90027-D-13 RIGOBERTO MARTINEZ AND OBJECTION TO CONFIRMATION OF
RDG-2 MARIA MAGANA DE MARTINEZ PLAN BY RUSSELL D. GREER
3-13-17 [23]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

21. 17-90031-D-13 JAIME SANCHEZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
3-13-17 [32]

Final ruling:

This is the trustee's objection to confirmation of the debtor's original chapter 13 plan. On February 24, 2017, the debtor filed a motion to confirm the same plan, set for April 18, 2017. (Apparently the debtor believed the plan had not been originally filed in time for the debtor to proceed under LBR 3015-1(c).) As a result of the filing of the motion to confirm plan, the trustee's objection is moot. The trustee's rights will not be impaired - he has already filed opposition to the motion, including the same issues he raised in this objection to confirmation. The objection will be overruled as moot by minute order. No appearance is necessary.

22. 17-90069-D-13 PAMELA MCCOLLOCH
WJS-1
JOAN AROZ VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-20-17 [20]

23. 17-90181-D-13 DONALD/PHYLLIS PIERAZZI
MRG-1

MOTION TO EXTEND AUTOMATIC STAY
3-20-17 [16]