

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

April 11, 2017 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.	15-28202-D-13	STEVE/SARA LOPEZ	MOTION TO MODIFY PLAN
	RAC-3		2-26-17 [44]

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. 17-20211-D-13 ROBERT/CYNTHIA RANGEL OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
3-13-17 [28]

3. 17-21314-D-13 JOANNA WATERS MOTION TO VALUE COLLATERAL OF  
DJC-1 ONEMAIN FINANCIAL GROUP, LLC  
3-10-17 [9]

**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.

4. 12-29222-D-13 KYLE/TRACY TROCHE MOTION TO MODIFY PLAN  
PGM-2 2-28-17 [94]

5. 15-25828-D-13 FRED NEELEMAN MOTION TO MODIFY PLAN  
PK-5 2-24-17 [83]

**Final ruling:**

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied for the following reasons: (1) the proof of service states the date of service as July 20, 2016, a date long before the date the moving papers were signed; (2) the moving party failed to serve several of the creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g), and failed to serve some of them at all; and (3) for those creditors listed on the schedules who have not filed claims, the moving party failed to serve several of them at their addresses on the debtor's Schedule F, as required by Fed. R. Bankr. P. 2002(g), and failed to serve some of them at all. Thus, the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b).

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

6. 17-20436-D-13 THEODORE MADZEY OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
3-13-17 [44]
7. 17-20242-D-13 LEMUEL/JANETTE BALICO OBJECTION TO CONFIRMATION OF  
KAZ-1 PLAN BY WELLS FARGO BANK, N.A.  
2-14-17 [14]
8. 16-28157-D-13 MARK/JEANETTE WEBER MOTION TO CONFIRM PLAN  
LRR-3 2-22-17 [29]
9. 16-28157-D-13 MARK/JEANETTE WEBER MOTION TO VALUE COLLATERAL OF  
LRR-4 INTERNAL REVENUE SERVICE  
2-22-17 [35]

**Tentative ruling:**

This is the debtors' motion to value the collateral securing a claim of the Internal Revenue Service ("IRS"). The IRS has filed opposition. For the following reasons, the hearing will be continued to allow the parties to supplement the record.

The debtors' real property - a commercial building in Lodi, California - and all of their personal property is subject to the IRS's lien. The debtors seek to value the lien at a figure they contend equals the excess value in the property over and above the amounts secured by liens senior to the IRS's lien. There is a deed of trust against the real property and three tax liens, including the one at stake

here, against the real property and the personal property. The debtors contend the value of the real property is \$212,000. The amount due on the deed of trust is \$161,047, leaving \$50,953 in value available to secure the tax liens, all of which are junior to the deed of trust. The debtors value their personal property at \$34,026, subject only to the three tax liens. Thus, after deduction of the amount due on the deed of trust, there is a total of \$84,979 in combined value in the real and personal property available to secure the tax liens.<sup>1</sup>

The tax liens are: (1) a lien held by the IRS, recorded in 2010, on which \$35,549 was owed as of the petition date; (2) a lien held by the Franchise Tax Board ("FTB"), recorded in 2015, for approximately \$33,000 as of the petition date; and (3) another lien held by the IRS, recorded in 2016, for \$119,979 as of the petition date. There is enough value in the debtors' real and personal property to secure the IRS's 2010 lien and the FTB's lien, leaving \$16,430 in value available to secure the IRS's 2016 lien.<sup>2</sup> Thus, the debtors seek to value the IRS's claim secured by its 2016 tax lien at \$16,430.

The IRS disputes only the debtors' valuation of the real property: it contends the value is \$333,000. If that is the case, then arguably, the IRS's 2016 tax lien is fully secured.<sup>3</sup> The state of the evidence at present is this. The debtors testify they disclosed their ownership interest in the property on their Schedule A/B "with a gross value of \$212,000." Debtors' Decl., DN 37, at 2:11-12.<sup>4 5</sup> The IRS has submitted a copy of a "drive-by" evaluation prepared by a real estate broker that shows a market value of \$333,000. The evaluation report is hearsay and inadmissible.<sup>6</sup> Absent more, the court would likely accept the debtors' testimony as sufficient to carry their burden of proof.

However, the IRS has also submitted a copy, authenticated by a bankruptcy specialist in its Insolvency Unit, of an IRS form entitled Collection Information Statement for Wage Earners and Self-Employed Individuals that was filled out by hand and appears to be signed by debtor Mark Weber. The date of his signature is September 26, 2016, less than three months before the debtors filed this case. On that document, Mr. Weber listed the value of the real property as "\$300K." As that figure is substantially higher than the \$212,000 figure the debtors listed on their Schedule A/B in this case, filed with their petition on December 12, 2016, the IRS suggests the form calls the debtors' credibility into question.<sup>7</sup>

A review of the record in this case, of which the court takes judicial notice, indicates the debtors obtained a professional appraisal between the time Mr. Weber completed the collection information statement for the IRS and the date they filed their bankruptcy schedules. With their motions to avoid the two judicial liens referred to above, the debtors filed a copy of an appraisal report prepared by a certified appraiser and dated October 13, 2016. Thus, although Mr. Weber opined on the collection information statement that the value was \$300,000, he later obtained an appraisal showing a value of \$212,000. There is no reason to suppose the debtors were attempting to deceive anyone when they adopted their appraiser's value on their schedules or in support of this motion.

However, although the collection information statement does not cast doubt on the debtors' motives, it does call into question their ability to determine the value of the property on their own and without the appraisal. That is, on September 26, 2016, Mr. Weber apparently believed the value was \$300,000 but on December 12, 2016, he apparently believed it was \$212,000. Although the debtors testified in support of the lien-avoidance motions that they believed "based on [their] knowledge of properties in the local area" that the appraiser's figure was

accurate, the court cannot conclude the debtors' \$212,000 valuation is based on anything other than their appraisal, which is inadmissible.

Because the lien-avoidance motions were unopposed, the court relied on the debtors' testimony as property owners and their statement that their opinion was based on their knowledge of other properties in the area. However, the present motion is opposed and the collection information statement casts doubt on the debtors' ability to accurately determine the value of the property except by reliance on an appraisal that, thus far in this case, has not been authenticated and is inadmissible. The IRS, similarly, bases its opinion of value on an inadmissible drive-by appraisal by a broker.

For these reasons, the court will offer both parties the opportunity to supplement the record if they wish to do so. If the debtors do not wish to supplement the record, the court will deny the motion because their evidence of value, supported by no admissible expert testimony and being undermined by the collection information statement, does not satisfy their burden of proof.

The court will hear the matter.

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1       $\$212,000 - \$161,047 + \$34,026 = \$84,979.$

2       $\$84,979 - \$35,549 - \$33,000 = \$16,430.$

3      This conclusion is arguable, not decisive, because the debtors earlier in this case obtained orders avoiding judicial liens based on the debtors' \$212,000 valuation. The abstracts of judgment creating those liens were recorded in 2011 and 2012, respectively; thus, the judicial liens were junior to the IRS's 2010 lien but senior to the FTB's lien and the IRS's 2016 lien. The amounts of the judicial liens were significant - \$16,648 and \$41,119, respectively. If the IRS is right about the value of the property, or if the value falls somewhere between the debtors' and the IRS's valuations, the orders avoiding the judicial liens might be subject to reconsideration under Fed. R. Civ. P. 60(b), incorporated in bankruptcy cases by Fed. R. Bankr. P. 9024, and if the orders avoiding the judicial liens were vacated or modified, the revived liens would impact the amount of equity available to secure the FTB's lien and the IRS's 2016 lien.

4      The court rejects the debtors' position that "[t]he gross value of \$212,000.00 for the real property has already been established by this Court when our Motions to Avoid Liens [the judicial liens referred to in the preceding footnote] were granted on or about January 31, 2017." The IRS's liens were not the subject of those motions and the IRS was not given notice of them. As a simple matter of due process, the orders are not binding on the IRS as to the value of the property (or any other matter).

5      The IRS takes issue with the debtors' use of the term "replacement value," contending that is not the correct standard to apply to real property. The court finds the debtors' single use of the term, in connection with both their real and personal property ("the replacement value of all our real and personal property") was incidental, no doubt affected more by the reference to their personal property than to the real property. The court construes the debtors' testimony as simply that the fair market value of the real property, for purposes of determining the value of the IRS's 2016 lien, is \$212,000.

6     The only declaration filed by the IRS is that of a bankruptcy specialist  
employed in its Insolvency Unit.

7 "It appears that the Debtors do not have a professional appraisal of the real property. They have represented that the value is only \$212,000 even though they previously valued it at \$300,000. It appears they intentionally used the wrong valuation method to arrive at an artificially low valuation. [The] IRS now believes its appraisal of \$333,000 is far more reliable than the Debtors' schedules . . . ." S. Lathrop Decl., DN 55, at 2:16-20.

10. 16-26671-D-13 JOHN/HASINA HELMANDI OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
3-13-17 [87]

11.	16-26671-D-13 RGH-1	JOHN/HASINA HELMANDI	OBJECTION TO CONFIRMATION OF PLAN BY MATINE SHAYGAN, NAHEED SHAYGAN, AND RICHARD G. HYPPA 3-15-17 [99]
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12. 15-27278-D-13 PAUL/SHARON WILLIAMS AMENDED MOTION TO INCUR DEBT  
MJH-4 3-27-17 [81]

13. 15-21280-D-13 ERNESTO SANCHEZ AND DIANA MOTION TO MODIFY PLAN  
CJY-1 CORTINAS 2-28-17 [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.

14. 16-26991-D-13 CLAUDIA LEON-VANDERHAVE MOTION TO CONFIRM PLAN  
MMS-5 2-22-17 [80]

15. 14-20996-D-13 FRANCISCO/MARIA PADILLA MOTION TO DISMISS CASE  
CDR-1 3-1-17 [140]

16. 17-21196-D-13 MICHAEL/IMEE TAGORDA MOTION TO VALUE COLLATERAL OF  
MKM-1 BROTHERS AUTO CONNECTION  
3-13-17 [12]

**Tentative ruling:**

This is the debtors' motion to value the collateral of Brothers Auto Connection; namely, a 2004 Mazda 3 hatchback, at \$3,490. The motion will be denied because it is not accompanied by evidence demonstrating that the moving parties are entitled to the relief requested, as required by LBR 9014-1(d)(7).

The moving papers do not indicate when the debt was incurred; thus, the court has looked to the debtors' schedules, of which the court takes judicial notice. According to their Schedule D, the debt is secured by a purchase money security interest in the vehicle; the amount of the debt as of the petition date was \$6,113; and the debt was incurred in October of 2016, well within the 910-day period described in the "hanging paragraph" that follows § 1325(a)(9). According to their Schedule I, both of the debtors are employed; they do not have their own business. Thus, it appears the vehicle was purchased for personal use, and pursuant to the hanging paragraph, the debtors are not entitled to value the claim at less than its full amount.

The court will hear the matter.

17. 15-22103-D-13 MARK/LISA KAPOGIANNIS CONTINUED MOTION TO INCUR DEBT  
JCK-2 3-10-17 [23]
18. 14-28986-D-13 MARGARITA GUTIERREZ MOTION TO SELL  
PGM-4 3-20-17 [162]
19. 17-21791-D-13 PATRICIA BROWN MOTION TO EXTEND AUTOMATIC STAY  
FI-1 3-20-17 [8]