

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

May 15, 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.	13-90900-D-13 JCK-2	CLIFF/CARMOLETTA FERRELL	MOTION TO SUBSTITUTE CONNIE FERRELL AS THE REPRESENTATIVE FOR CLIFTON FERRELL AND/OR MOTION TO EXCUSE DEBTOR FROM COMPLETING CERTIFICATE OF CHAPTER 13 DEBTOR RE: 11 U.S.C. 522 (Q) EXEMPTIONS, NOTICE OF DEATH OF A DEBTOR 4-12-18 [65]
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Tentative ruling:

This is the joint debtor's motion to be substituted into the case as the representative of the debtor, who has passed away. If the joint debtor's counsel brings to the hearing for filing a corrected proof of service that is signed under oath, as required by 28 U.S.C. § 1746, the motion will be granted. The court will hear the matter.

2. 17-90400-D-13 JAMELIA ROBINSON
17-9005
ROBINSON V. PACIFIC MOTORS

MOTION TO DISMISS ADVERSARY
PROCEEDING
3-27-18 [29]

Final ruling:

This is the motion of defendant Pacific Motors and defendant's counsel to dismiss this adversary proceeding unless, before the hearing date, which was originally scheduled by the defendant for this date, the plaintiff's counsel has reimbursed the defendant's counsel for fees and costs associated with her March 22, 2018 trip to Sacramento for a pretrial conference. For the following reasons, the motion will be denied despite the defendant's subsequent filing of a notice of continuance.

The motion contains several procedural defects. The notice of motion and motion, together with a memorandum of points and authorities, supporting declaration, and proof of service, were all filed as a single document rather than separately, as required by LBR 9004-2(c)(1), (d)(1), and (e)(1). The moving papers also include, as part of the same single document, the defendant's response to the plaintiff's motion for clarification, contrary to the same local rules. The moving papers do not include a docket control number, as required by LBR 9014-1(c). The notice does not include the cautionary and advisory language required by LBR 9014-1(d)(3)(B)(ii) and (iii). The motion includes factual allegations and conclusions about the nature of the defendant's business, the plaintiff's and defendant's respective incomes, and the plaintiff's conduct after purchasing a car from the defendant - these allegations and conclusions are not supported by evidence, as required by LBR 9014-1(d)(3)(D). The proof of service is on a form used in the California Central District Bankruptcy Court, not in this court, and it does not comply with this court's local rule. The proof of service purports to evidence that the moving papers "will be served by the court via NEF and hyperlink to the document." This does not comply with this court's requirements for electronic service, LBR 7005-1(d)(1) and (2), and proof of service by electronic means, LBR 7005-1(d)(3).

The motion will be denied for the additional independent reason that it purports to require the plaintiff's counsel to reimburse the defendant's counsel before the hearing or face dismissal of the adversary proceeding,¹ whereas the court, at the hearing referred to in the motion, did not specify an amount required to be reimbursed to the defendant's counsel or a deadline for such payment and the court has issued an order on a motion filed by the plaintiff as follows: "Although the court orally stated that it intended to require plaintiff's counsel to reimburse defendant's counsel as indicated above, the court has not issued any such order, thus, no amount is payable at this time. Any such reimbursement assessment will only be established by further order of this court stating the specific amount it is assessing and fixing the time for payment." Order on Motion for Clarification, filed March 28, 2018, at 2:7-12. Although the order was issued the day after this motion was filed, and the filing of the motion might be excused on that basis, the defendant's purported notice of continuance, filed April 30, 2018, may not. As the court has specifically ruled that no amount is payable at this time, and as the court has set no deadline for payment, the motion will be denied. Counsel should also note that the notice of continuance does not comply with LBR 9014-1(j).

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

1 "If [the plaintiff's counsel] fails to reimburse the \$4,280.60 to [the defendant's counsel], before the 5/15/18 hearing, the Court should grant [the defendant's] herein Motion to Dismiss the adversary proceeding." Notice of Motion and Motion, at 5:23-25.

3. 18-90106-D-13 ROBERT/JULIET ALVAGI OBJECTION TO CONFIRMATION OF
AP-1 PLAN BY U.S. BANK NATIONAL
ASSOCIATION
4-18-18 [26]

4. 18-90106-D-13 ROBERT/JULIET ALVAGI OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
4-16-18 [23]

5. 17-91007-D-13 JOANN LOPES CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
2-12-18 [29]

6. 16-90210-D-13 ANTHONY/TONYA BENTULAN MOTION TO MODIFY PLAN
JAD-1 3-16-18 [55]

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.

7. 16-90921-D-13 JOHN/JULIE HOLDER MOTION TO MODIFY PLAN
RLF-3 4-6-18 [57]

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.

8. 18-90127-D-13 RAMON GONZALES AND SILVIA OBJECTION TO CONFIRMATION OF
RDG-1 ESQUIVEL PLAN BY RUSSELL D. GREER
4-16-18 [22]

Final ruling:

This is the trustee's objection to confirmation of the debtors' proposed chapter 13 plan. The debtors have filed a statement that they do not oppose the objection and intend to file an amended plan. Thus, the court will sustain the objection by minute order. No appearance is necessary.

9. 16-90731-D-13 WILLIAM/SHIRLEY BEDWELL MOTION TO MODIFY PLAN
MSN-2 3-27-18 [40]

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. 18-90154-D-13 EDWARD/KAREN WICKMAN CONTINUED MOTION TO VALUE
MRG-1 COLLATERAL OF BBVA COMPASS
4-3-18 [15]

Final ruling:

This is the debtors' motion to value collateral of BBVA Compass (the "Bank"), a 2010 Ford Expedition. For the following reasons, the court will grant the motion, with a caveat.

The debtors' valuation is based on the Kelley Blue Book private party value. They have submitted the declaration of Ridgeley T. Schneider, who has spent 35 years in the automotive sales industry in California. Mr. Schneider testifies that "the private party value prescribed by Kelly Blue Book is the best and most accurate objective indicator of the price a retail merchant would charge for property of that kind, considering the age and condition of the property." Schneider Decl., DN 29, at

2:7-10. The court is troubled by the fact that Mr. Schneider's analysis and conclusion assume no difference between a private party seller and a seller who is a retail merchant. The applicable case law makes the distinction, with courts within the Ninth Circuit favoring the KBB retail value over the private party value as the appropriate starting point.¹ Further, the court takes judicial notice that the Kelley Blue Book itself makes the distinction, a fact Mr. Schneider does not mention. The KBB provides both (1) a "Buy from a Dealer" value and value range; and (2) a "Buy from a Private Party" value and value range. The values and value ranges vary noticeably as between the two, with the "Buy from a Dealer" value and value range being higher.^{2 3}

Because the Bank has not opposed the motion and because the debtors have submitted at least some evidence in support of their valuation, the court will grant the motion. It should not be assumed, however, that the court will regularly utilize the KBB private party value as either a starting point or a final value for purposes of § 506(a) motions. The motion will be granted by minute order. No appearance is necessary.

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).

2 For a vehicle comparable to the debtors', for example, compare <https://www.kbb.com/ford/expedition/2010/xlt-sport-utility-4d/?vehicleid=348201&intent=buy-used&options=6507102%7cttrue&mileage=65000&condition=good&pricetype=retail> ("Buy from a Dealer") with <https://www.kbb.com/ford/expedition/2010/xlt-sport-utility-4d/?vehicleid=348201&intent=buy-used&options=6507102%7cttrue&mileage=65000&condition=very-good&pricetype=private-party> ("Buy from a Private Party"), both last visited May 9, 2018.

3 The cases cited above referred to the KBB "retail" value as being a "starting point," with a downward adjustment to be made because, when those decisions were issued, the KBB defined its "retail" value as being the value of a vehicle in excellent condition. See Araujo, 464 B.R. at 19; Morales, 387 B.R. at 38. As of the date of this writing, however, the KBB defines its "Buy from a Dealer" values as being "Based on Good Condition or Better." See <https://www.kbb.com/ford/expedition/2010/xlt-sport-utility-4d/valuetype/?vehicleid=348201&intent=buy-used&pricetype=retail&options=6507102|true&mileage=65000>, last visited May 9, 2018. Thus, the court would expect the price a retail merchant would charge for a comparable vehicle, based on the "very good" condition asserted by the debtors, to be at the higher end of the KBB's "Buy from a Dealer" value range, rather than the quite-a-bit lower private party value the debtors have assigned it.

11. 17-90959-D-13 ERIC BURKE CONTINUED MOTION TO DISMISS
RDG-1 CASE
1-9-18 [21]

12. 17-90959-D-13 ERIC BURKE CONTINUED MOTION TO CONFIRM
TOG-1 PLAN
1-16-18 [28]

13. 17-90871-D-13 MANUEL OLIVARES AND MOTION TO CONFIRM PLAN
TOG-5 AGRIPINA YEPEZ
4-3-18 [82]

14. 16-90177-D-13 TROY/CHARIA SHEETS MOTION TO MODIFY PLAN
MLP-5
3-28-18 [69]

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. 17-90982-D-13 ANTHONY CLARK
MLP-1

MOTION TO CONFIRM PLAN
3-28-18 [20]

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.

16. 18-90083-D-13 MERCEDES HOLLOWAY
DCJ-2

MOTION TO CONFIRM PLAN
4-2-18 [34]

17. 18-90084-D-13 ALICIA VALADEZ
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-16-18 [18]

18. 18-90087-D-13 APOLONIO YANEZ
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-16-18 [31]

Final ruling:

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. The debtor has filed a statement that the debtor does not oppose the objection and has filed an amended plan. Thus, the court will sustain the objection by minute order. No appearance is necessary.

19. 18-90090-D-13 CLIFFORD BARBERA
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-16-18 [18]

20. 17-90794-D-13 RUBEN ALVAREZ
PLG-4

MOTION TO CONFIRM PLAN
3-23-18 [58]

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.

21. 15-91195-D-13 SOMCHAY/SANDY VONGSENA
RDG-3

OBJECTION TO CLAIM OF NAVIENT
SOLUTIONS, LLC, CLAIM NUMBER 25
4-3-18 [97]

22. 17-90898-D-13 LEONARD/DEVA CHAPMAN
SSW-1
KEYBANK, N.A. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-11-18 [36]

23. 16-90415-D-13 KYLE WATKINS
MSN-5

MOTION TO INCUR DEBT
4-25-18 [61]

24. 11-94028-D-13 STEVEN/SHEILA ROCHA
PBG-1

MOTION TO AVOID LIEN OF
CITIBANK (SOUTH DAKOTA), NA
4-20-18 [56]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Citibank (South Dakota), N.A. (the "Bank"). For the following reasons, the motion will be denied.

First, the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). According to the proof of service, the moving parties served (1) Citi Financial Services, Inc. and Citibank Customer Service at separate addresses, with no attention line; (2) the attorney who obtained the Bank's abstract of judgment; and (3) the named chief financial officer of CitiGroup, Inc. by certified mail. The first method was insufficient because neither of the entities purportedly served is the entity named in the abstract of judgment (or the motion).¹ The second method was insufficient because an FDIC-insured institution that has not appeared in an action, such as the Bank, must be served to the attention of an officer of the institution. Rule 7004(h). There is no provision for service on an FDIC-insured institution through an attorney who has appeared for the Bank in a prior action.

The third method was insufficient because the entity purportedly served, CitiGroup, Inc., is not the entity named in the abstract of judgment (or the motion).² According to the FDIC's website, the Bank no longer does business under the name Citibank (South Dakota), N.A.; its successor institution is Citibank, National Association, not CitiGroup, Inc. Thus, the moving parties should have served the successor institution, Citibank, National Association, which is an FDIC-insured institution, in accordance with Rule 7004(h). Although the Bank's successor institution may be a subsidiary of or in some other way affiliated with CitiGroup, Inc., the latter is not the same entity as the Bank and it is not the Bank's successor institution.

The motion will be denied for the additional independent reason that the moving parties have not scheduled or claimed as exempt any interest in the property against which they seek to avoid the Bank's lien.

There are four basic elements of an avoidable lien under § 522(f)(1)(A):

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f).

Second, the property must be listed on the debtor's schedules and claimed

as exempt. Third, the lien must impair that exemption. Fourth, the lien must be ... a judicial lien. 11 U.S.C. § 522(f)(1).

In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table).

The debtors did not claim any interest in the property as exempt and they have not filed an amended schedule of exemptions since the case was reopened. In fact, the property listed on the debtors' Schedule A has a different address from the property as against which they now seek to avoid the lien, and they have neither scheduled the latter property nor claimed it as exempt.

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

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- 1 The court uses the term "purportedly served" because these entities themselves were not properly served. See Fed. R. Bankr. P. 7004(b)(3).
 - 2 The court uses the term "purportedly served" because CitiGroup, Inc. itself was not properly served. According to the FDIC's website, CitiGroup, Inc. is not an FDIC-insured institution; thus, it must be served by first-class mail (see Rule 7004(b)(3) and preamble to Rule 7004(b)), not certified mail.

25. 18-90090-D-13 CLIFFORD BARBERA
LON-1

OBJECTION TO CONFIRMATION OF
PLAN BY DAMON BOWERS, LISA
BOWERS AND DB CAPITAL
INVESTMENTS, INC.
4-18-18 [21]