

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Modesto, California

**May 16, 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.	16-90304-D-13	JOHN DEMING	CONTINUED MOTION TO CONFIRM PLAN 2-15-17 [109]
	DCJ-5		

2.	16-90304-D-13	JOHN DEMING	CONTINUED MOTION TO VALUE COLLATERAL OF MERCEDES-BENZ FINANCIAL SERVICES USA, LLC 3-21-17 [124]
	DCJ-6		

**Final ruling:**

The hearing on this motion is continued to May 30, 2017 at 10:00 a.m. No appearance is necessary.

3. 16-90304-D-13 JOHN DEMING  
DCJ-7

CONTINUED MOTION TO VALUE  
COLLATERAL OF MERCEDES-BENZ  
FINANCIAL SERVICES USA, LLC  
3-21-17 [128]

**Final ruling:**

**The hearing on this motion is continued to May 30, 2017 at 10:00 a.m. No appearance is necessary.**

4. 16-90011-D-13 WILLIAM WALKER  
EAT-1  
U.S. BANK, N.A. VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-17-17 [78]

**Final ruling:**

**This case was dismissed on April 26, 2017. As a result the motion will be denied by minute order as moot. No appearance is necessary.**

5. 14-90915-D-13 MERCEDITA TALAROC  
MC-3

MOTION TO MODIFY PLAN  
3-27-17 [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.**

6. 13-92116-D-13 DIANA ROCHA  
CJY-4

MOTION TO APPROVE LOAN  
MODIFICATION  
4-21-17 [99]

7. 12-92725-D-13 BARBARA LOCKETT  
CJY-3

MOTION TO MODIFY PLAN  
4-3-17 [70]

**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. 17-90126-D-13 MATTHEW/CELESTE JAMISON  
RDG-3

OBJECTION TO DEBTORS' CLAIM OF  
EXEMPTIONS  
4-10-17 [27]

**Final ruling:**

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

9. 16-90827-D-13 MICHAEL LOCARNINI  
DCJ-3

MOTION TO CONFIRM PLAN  
4-4-17 [65]

**Tentative ruling:**

This is the debtor's motion to confirm a second amended chapter 13 plan. The court denied the debtor's motion to confirm a first amended plan on March 7, 2017. The second amended plan is identical to the first amended plan and the trustee has filed the same opposition, raising the same seven points, that he filed to the first amended plan. Further, as the trustee points, he raised two of his points in his objection to confirmation of the debtor's original plan. That is, the trustee has now raised the same two issues three times and three others twice. The case has been pending since September 9, 2016. The court will hear this matter to determine whether the debtor can offer any basis on which to conclude he is not prosecuting this case in bad faith for the sole purpose of delay.

10. 16-90935-D-13 ANTONIO LOA AND CHRISTY  
MJD-3 RAMIREZ

MOTION TO CONFIRM PLAN  
4-3-17 [75]

**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.

11. 17-90145-D-13 NICOLE MORADKHANIAN CONTINUED MOTION FOR RELIEF  
SSA-1 FROM AUTOMATIC STAY AND/OR  
VELMA HOWELL VS. MOTION FOR ADEQUATE PROTECTION  
3-17-17 [15]
12. 17-90145-D-13 NICOLE MORADKHANIAN CONTINUED OBJECTION TO  
SSA-2 CONFIRMATION OF PLAN BY VELMA  
HOWELL  
3-24-17 [24]
13. 14-90654-D-13 ANGEL/TABATHA GARCIA MOTION TO MODIFY PLAN  
LRR-6 3-22-17 [82]

**Final ruling:**

This is the debtors' motion to confirm a modified chapter 13 plan. The motion will be denied because the moving parties failed to serve Wells Fargo Home Mortgage, listed on the debtors' Schedule D as holding first and second position deeds of trust against the debtors' residence, at its address on the debtors' Schedule D, as required by Fed. R. Bankr. P. 2002(g)(2). The moving parties served Well Fargo Bank at several addresses and Wells Fargo Home Mortgage at another address. However, because Wells Fargo Home Mortgage has not filed a request for special notice in the case or a proof of claim on account of either loan, the debtors were required by the rule cited above to serve Well Fargo Home Mortgage at the address on the debtor's schedule.

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

14. 16-90371-D-13 MATTHEW METTLER MOTION TO MODIFY PLAN  
JM-2 3-31-17 [36]

**Final ruling:**

This is the debtor's motion to confirm a second modified chapter 13 plan, DC No. JM-2. On April 24, 2017, the moving party re-filed the second modified plan and filed a new motion to confirm it, DC No. JM-3, which he set for hearing on June 13, 2017. As a result of the filing of motion DC No. JM-3, the present motion, DC No. JM-2, is moot. The motion will be denied as moot by minute order. No appearance is necessary.

15. 14-90479-D-13 HOMERO/MIDESSLAHA MOTION TO MODIFY PLAN  
CJY-4 CAMPOZANO 3-31-17 [103]

**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. 15-90481-D-13 JOSE/MENDY SOLANO MOTION TO MODIFY PLAN  
JAD-2 4-4-17 [41]

17. 15-90388-D-13 JOSEPH SHAW AND MARY MOTION TO MODIFY PLAN  
RLF-2 INDERBITZIN-SHAW 3-30-17 [56]

**Tentative ruling:**

This is the debtors' motion to confirm a modified chapter 13 plan. The trustee has filed opposition. However, the court has a preliminary concern. The proof of service states that service was made on February 6, 2017, whereas the plan, motion, and related documents were not signed until March 30, 2017. If a corrected proof of service has been filed by the time of the hearing, the court will hear the matter. Otherwise, the motion will be denied.

18. 14-91590-D-13 SCOTT/TAMARA WEBB CONTINUED OBJECTION TO CLAIM OF  
CJY-1 INTERNAL REVENUE SERVICE, CLAIM  
NUMBER 7-2  
2-15-17 [29]
19. 16-91000-D-13 MAURICE/VENISE SMALLEY CONTINUED MOTION TO CONFIRM  
BSH-1 PLAN  
3-21-17 [36]
20. 16-91000-D-13 MAURICE/VENISE SMALLEY CONTINUED MOTION TO VALUE  
BSH-2 COLLATERAL OF JPMORGAN CHASE  
BANK, N.A.  
3-28-17 [41]
21. 16-91000-D-13 MAURICE/VENISE SMALLEY CONTINUED MOTION TO VALUE  
BSH-3 COLLATERAL OF CHRYSLER CAPITAL  
3-28-17 [46]

**Final ruling:**

This is the debtors' motion to value collateral of Chrysler Capital ("Chrysler"). The hearing was continued to permit the debtors to correct certain service and notice defects, which they have not done. Accordingly, the motion will be denied for the following reasons. The moving parties served Chrysler by certified mail to the attention of an "Officer of the Institution," whereas Chrysler is not an FDIC-insured institution and was required to be served by first-class mail, not certified mail. Compare Fed. R. Bankr. P. 7004(b)(3) and preamble to 7004(b) with Fed. R. Bankr. P. 7004(h). In addition, the notice of hearing gave the hearing date as May 2, 2017 in the caption but May 3, 2017 in the text.

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

22. 16-90718-D-13 DANA JONES  
TLC-3

CONTINUED MOTION TO CONFIRM  
PLAN  
3-17-17 [58]

23. 12-91525-D-13 DAVE BEYETTE  
CJY-4

MOTION TO AVOID LIEN OF CA  
UNINSURED EMPLOYERS BENEFITS  
TRUST FUND  
5-1-17 [71]

**Tentative ruling:**

This is the debtor's motion to avoid a lien held by the Department of Industrial Relations (the "Department") pursuant to § 522(f) of the Bankruptcy Code. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, it appears the Department's lien is a statutory lien, not a judicial lien, and therefore, that the moving party has failed to provide evidence demonstrating that he is entitled to the relief requested, as required by LBR 9014-1(d)(7).

The lien is evidenced by a Certificate of Lien recorded by the Department with the County Recorder of Calaveras County pursuant to Cal. Labor Code § 3720. (The certificate states it is being filed "pursuant to Labor Code Section 3720.") That section provides:

When the [Workers' Compensation] [A]ppeals [B]oard or the [D]irector [of Industrial Relations] determines under Section 3715 or 3716 that an employer has not secured the payment of compensation as required by this division or when the director has determined that the employer is prima facie illegally uninsured, the director may file for record in the office of the county recorder in the counties where the employer's property is possibly located, a certificate of lien showing the date that the employer was determined to be illegally uninsured or the date that the director has determined that the employer was prima facie illegally uninsured. . . . Upon the recordation, the certificate shall constitute a valid lien in favor of the director, and shall have the same force, effect and priority as a judgment lien and shall continue for 10 years from the time of the recording of the certificate unless sooner released or otherwise discharged.

Pursuant to § 522(f)(1)(A) of the Bankruptcy Code, a debtor may avoid a judicial lien that impairs an exemption to which the debtor would have been entitled absent the lien. The Code defines a "judicial lien" as one "obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." § 101(36). In contrast, a "statutory lien" is one that arises "solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien . . . ." § 101(53). Thus, the definitions are mutually exclusive - a nonconsensual lien is

either a judicial lien or a statutory lien; it cannot be both. See In re Harpole, 260 B.R. 165, 171 (Bankr. D. Mont. 2001), citing H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 312 (1977). "A statutory interest is only one that arises automatically, and is not based on an agreement to give a lien or on judicial action. Mechanics' [construction], materialmen's and warehousemen's liens are examples. Tax liens are also included in the definition of statutory lien." Harpole at 172, citing H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 314 (1977).

Here, pursuant to Cal. Labor Code § 3720, the Department's lien arose automatically upon recordation of the Certificate of Lien with the County Recorder. No judicial action or process was involved. In the court's view, the reference in the statute to the "same force, effect and priority as a judgment lien" does not operate to turn an automatic statutory lien into a judicial lien, as defined by the Bankruptcy Code. That is, it does not transmute the lien into one obtained through a judicial process. Accordingly, the debtor has not demonstrated the lien is one subject to avoidance under § 522(f)(1) and the court will deny the motion. In the alternative, the court will continue the hearing to permit the moving party to brief the issue. The court will hear the matter.

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| 24. | 17-90143-D-13<br>RDG-1 | HELIODORO/MIRIAM MACIAS | OBJECTION TO CONFIRMATION OF<br>PLAN BY RUSSELL D. GREER<br>4-24-17 [13] |
|     |                        |                         |  |
| 25. | 17-90144-D-13<br>RDG-1 | DONNA MASON             | OBJECTION TO CONFIRMATION OF<br>PLAN BY RUSSELL D. GREER<br>4-24-17 [14] |
|     |                        |                         |  |
| 26. | 17-90145-D-13<br>RDG-2 | NICOLE MORADKHANIAN     | OBJECTION TO CONFIRMATION OF<br>PLAN BY RUSSELL D. GREER<br>4-24-17 [61] |



27. 17-90146-D-13 LORENA LARA  
DMP-1  
CAM XVIII TRUST VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-26-17 [34]

**DEBTOR DISMISSED: 03/30/2017**

28. 17-90153-D-13 JASON UNDERWOOD  
RCO-1

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
5-3-17 [28]

29. 17-90277-D-13 GOPIKRISHNAN CHANDRAN  
KMT-2  
EWA OLEJNIK VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION TO  
CONFIRM TERMINATION OR ABSENCE  
OF STAY  
5-2-17 [34]