

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

June 5, 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.	18-21214-D-13	JOSE PATINO	OBJECTION TO DEBTOR'S CLAIM OF
	RDG-1		EXEMPTIONS
			5-1-18 [20]

Final ruling:

This is the trustee's objection to the debtor's claim of exemption of a cause of action. On May 19, 2018, the debtor amended his Schedule C and deleted the claim of exemption of the cause of action. As a result of the filing of the amended Schedule C, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

2.	17-25915-D-13	CLAYTON/NANCY RAPOZA	MOTION TO INCUR DEBT
	JCK-3		5-10-18 [37]

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3. 17-22229-D-13 DENNIS/SHERRY CRUZ MOTION TO MODIFY PLAN
TBK-4 4-26-18 [89]

4. 17-27631-D-13 FARID DALILI MOTION TO CONFIRM PLAN
LTF-1 4-10-18 [21]

Final ruling:

This case was dismissed on May 22, 2018. As a result the motion will be denied by minute order as moot. No appearance is necessary.

5. 18-20638-D-13 BRIAN/JESSICA CAMPOS MOTION TO CONFIRM PLAN
JCK-4 4-12-18 [50]

6. 18-20638-D-13 BRIAN/JESSICA CAMPOS OBJECTION TO CONFIRMATION OF
JCK-4 PLAN BY JPMORGAN CHASE BANK,
N.A.
4-30-18 [55]

Final ruling:

This is the objection of JPMorgan Chase Bank (the "Bank") to confirmation of the debtors' first amended chapter 13 plan. The objection, filed with its own notice of hearing, reflects a misunderstanding of the local rules regarding confirmation of chapter 13 plans. The Bank has followed the procedure for objecting to a debtor's original plan (see LBR 3015-1(c)(4)), whereas for an amended plan, the debtor files a motion (see LBR 3015-1(d)(1)) and the trustee and/or a creditor or creditors file opposition to the motion, just as with any other motion. The procedure for an objection to confirmation of an original plan - with a separate notice of hearing - does not apply. The court will treat the Bank's objection as an opposition to the debtors' motion to confirm an amended plan, also on this calendar, and will overrule the objection as a stand-alone objection. The objection will be overruled by minute order. No appearance is necessary.

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7. 16-25449-D-13 GLENER SUASIN
DWE-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-4-18 [82]

8. 18-21253-D-13 INGRID CONTRERAS
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
4-30-18 [20]

9. 17-27960-D-13 CRAIG GILMORE
GMW-1

MOTION TO CONFIRM PLAN
4-19-18 [81]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The moving party failed to serve the four creditors listed on his Schedule G as tenants of the debtor. 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 tenants of the debtor. In addition, the debtor failed to comply with Fed. R. Bankr. P. 1007(a)(1), which requires a debtor to include on his master address list the names and addresses of all parties included or to be included on his schedules, including Schedule G.

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

10. 18-21661-D-13 GERARDO LARA AND NORMA
CAMARENA

OBJECTION TO CONFIRMATION OF
PLAN BY BOSCO CREDIT II, LLC
4-24-18 [18]

11. 18-20875-D-13 RANDY/TAMMY RALSTON
MSN-1

MOTION TO CONFIRM PLAN
4-10-18 [24]

12. 18-20875-D-13 RANDY/TAMMY RALSTON
MSN-2

MOTION TO VALUE COLLATERAL OF
CHASE AUTO FINANCE
4-12-18 [31]

Tentative ruling:

This is the debtors' motion to value collateral of Chase Auto Finance ("Chase"), a 2014 Nissan Altima. The motion will be denied because the debtors have failed to overcome the prima facie validity of Chase's filed proof of 1 and thus, failed to demonstrate they are entitled to the relief requested, as required by LBR 9014-1(d) (3) (D).

The debtors state in their declaration, "The value of the vehicle is \$8,261.00 if in good condition as substantiated by the Kelley Blue Book valuation." The KBB printout filed as an exhibit, however, is for the private party value, not the retail value, and the debtors have failed to demonstrate that the replacement value of the vehicle, as defined in § 506(a)(2) of the Code, is \$8,261 or any other value less than the secured portion of the claim, as asserted by Chase. The debtors have offered no reason for the court to conclude that the price a private party seller would charge is the same price a seller who is a retail merchant would charge.

Courts within the Ninth Circuit favor the retail value over the private party value as the appropriate starting point for determining replacement value.² Further, the court takes judicial notice that the Kelley Blue Book itself 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.³ The debtors have failed to demonstrate the private party value, as opposed to the retail merchant value, more closely approximates the replacement value of the vehicle.⁴

Because the debtors have failed to submit any evidence of the value of the vehicle based on the standard required by § 506(a)(2), the motion will be denied. The court will hear the matter.

1 Chase has filed a proof of claim for \$15,555, of which \$13,085 is claimed as secured and \$2,470 as unsecured.

2 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).

3 For a vehicle comparable to the debtors', for example, compare
<https://www.kbb.com/nissan/altima/2014/25-s-sedan-4d/?vehicleid=392396&intent=buy-used&options=5495316%7ctrue%7c7355729%7ctrue%7c5495341%7ctrue%7c5495373%7ctrue%7c5495373%7ctrue&mileage=127385&pricetype=retail&condition=good> ("Buy from a Dealer" - range from \$8,765 to \$10,806) with
<https://www.kbb.com/nissan/altima/2014/25-s-sedan-4d/?vehicleid=392396&intent=buy-used&options=5495316%7ctrue%7c7355729%7ctrue%7c5495341%7ctrue%7c5495373%7ctrue%7c5495373%7ctrue&mileage=127385&pricetype=private-party&condition=good> ("Buy from a Private Party" - range from \$7,537 to \$9,528), both last visited May 20, 2018.

4 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/nissan/altima/2014/25-s-sedan-4d/valuetype/?vehicleid=392396&intent=buy-used&mileage=60203&pricetype=retail&options=5495316|true|7355729|true|5495341|true|5495373|true|5495373|true>, last visited May 22, 2018. Thus, the court would expect the price a retail merchant would charge for a comparable vehicle, based on the "good" condition asserted by the debtors, to be at least in the middle 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.

13. 18-20875-D-13 RANDY/TAMMY RALSTON
MSN-3

MOTION TO AVOID LIEN OF LOBEL
FINANCIAL CORP.
4-12-18 [36]

Tentative ruling:

This is the debtors' motion to avoid a judicial lien held by Lobel Financial Corp. ("Lobel"). The motion will be denied because the debtors have failed to demonstrate they are entitled to the relief requested, as required by LBR 9014-1(d) (3) (D) .

Lobel holds a judicial lien against the debtors' residence to secure the original principal amount of \$4,843. The motion states that the value of the property is \$320,000. There is a deed of trust against it securing a debt of \$185,509 and the debtors have claimed a \$100,000 exemption in the property. The motion concludes, "Therefore Creditor's involuntary lien impairs the Debtors' claimed exemption as indicated in their Schedule C."

Missing is any application of the formula set forth in § 522(f) (2) (A) to these figures. The statute requires the debtors to add the amounts of the judicial lien, all other liens on the property, and the exemption the debtors could claim absent any liens on the property. In this case, those figures total \$290,352. The debtors may avoid the judicial lien only to the extent that the sum of those figures exceeds the value the property would have in the absence of any liens. Because the sum referred to - of the amounts of the judicial lien, non-avoidable liens, and the debtors' exemption, \$290,352 - does not exceed the property's value in the absence of any liens, \$320,000, the judicial lien does not impair the exemption.

Stated another way, the debtors owe \$185,509 on a deed of trust against the property and have claimed a \$100,000 exemption in it, which figures total \$285,509, whereas the value of the property is \$320,000. That leaves \$34,491 in equity

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available to secure Lobel's judicial lien in full.¹

Because the debtors have failed to demonstrate the lien impairs their exemption, the motion will be denied. The court will hear the matter.

1 The debtors' supporting declaration gives the value of the property as \$230,000 rather than \$320,000. However, the motion gives the value as \$320,000, as do the debtors' original and amended Schedules A and a comparative market analysis prepared by a realtor for the debtors and filed by them as an exhibit. Thus, apparently, the \$230,000 value in the declaration is a typographical error.

14. 18-20875-D-13 RANDY/TAMMY RALSTON
MSN-4

MOTION TO AVOID LIEN OF PACIFIC
SERVICE CREDIT UNION
4-12-18 [41]

Tentative ruling:

This is the debtors' motion to avoid a judicial lien held by Pacific Service Credit Union (the "Credit Union"). The motion will be granted in part and denied in part, the latter because the debtors have failed to demonstrate they are entitled to the full amount of the relief requested, as required by LBR 9014-1(d) (3) (D).

The Credit Union holds a judicial lien against the debtors' residence to secure the original principal amount of \$30,594. The motion states that the value of the property is \$320,000. There is a deed of trust against it securing a debt of \$185,509 and the debtors have claimed a \$100,000 exemption in the property. The motion concludes, "Therefore Creditor's involuntary lien impairs the Debtors' claimed exemption as indicated in their Schedule C."

Missing is any application of the formula set forth in § 522(f) (2) (A) to these figures. The statute requires the debtors to add the amounts of the judicial lien, all other liens on the property, and the exemption the debtors could claim absent any liens on the property. In this case, those figures total \$320,946. (The motion does not mention the judicial lien of Lobel Financial Corp., in the original principal amount of \$4,843. However, the court includes it, along with the amount due on the deed of trust, in the category "all other liens on the property"; that is, non-avoidable liens, because the court has determined on the debtors' motion to avoid Lobel's lien that it is not avoidable.¹) The debtors may avoid the Credit Union's judicial lien only to the extent that the sum of those figures exceeds the value the property would have in the absence of any liens. Because the sum referred to - of the amounts of the judicial lien, non-avoidable liens, and the debtors' exemption, \$320,946 - exceeds the property's value in the absence of any liens, \$320,000, by only \$946, the judicial lien impairs the debtors' exemption only to the extent of \$946 and the balance of the lien, \$29,648, does not impair the exemption.

Stated another way, the debtors owe \$185,509 on a deed of trust against the property and \$4,843 on a non-avoidable judicial lien, and they have claimed a \$100,000 exemption in the property, which figures total \$290,352, whereas the value of the property is \$320,000. That leaves \$29,648 in equity available to secure the Credit Union's judicial lien, leaving only \$946 unsecured. That is, the Credit Union's lien impairs the debtors' exemption only to the extent of \$946 and only that amount of the lien will be avoided. As to the balance of the lien, \$29,648, the motion will be denied and the lien will remain as a lien against the property.²

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Because the debtors have failed to demonstrate the lien impairs their exemption beyond the extent of \$946, the motion will be denied except as to that amount. The court will hear the matter.

- 1 Lobel's lien was recorded first; therefore, it has priority over the Credit Union's lien.
- 2 The debtors' supporting declaration gives the value of the property as \$230,000 rather than \$320,000. However, the motion gives the value as \$320,000, as do the debtors' original and amended Schedules A and a comparative market analysis prepared by a realtor for the debtors and filed by them as an exhibit. Thus, apparently, the \$230,000 value in the declaration is a typographical error.

15. 18-20785-D-13 ARTHUR LUND
CLH-1

MOTION TO SELL FREE AND CLEAR
OF LIENS AND/OR MOTION TO PAY
5-10-18 [23]

Tentative ruling:

This is the debtor's motion to approve the sale of certain real property for \$505,000, subject to overbidding. The court is inclined to deny the motion because the notice of hearing, which is the only document served on creditors, does not set forth sufficient facts necessary for a party to determine whether to oppose the motion, as required by LBR 9014-1(d)(3)(B)(iv). In fact, the motion itself fails to satisfy this standard. The notice and motion refer to the amount owed on the deed of trust against the property, \$377,456, the amount of the expected real estate commission, 5% of the sales price, or \$25,250, and the amount of the expected closing costs, \$5,000. Deducting these amounts from the sales price leaves \$97,294 in apparent net proceeds. The notice and motion state the net proceeds will be disbursed to the trustee for distribution under the debtor's chapter 13 plan.

What the notice and motion fail to mention are the filed secured claims of the IRS, the Franchise Tax Board, and the homeowners' association, for \$89,895, \$4,193, and \$3,216, respectively, a total of \$97,304, just over the amount of the alleged net proceeds. In other words, the notice and motion fail to disclose that the sale is likely to generate no net proceeds to be disbursed to the trustee and distributed to creditors.

In addition, the moving party has not made a sufficient showing under § 363(f) of the Code that an order approving the sale of the property "free and clear of all rights, titles, claims, liens, encumbrances and interests," as requested by the moving party, is appropriate. The only lien mentioned in the motion, that of Reverse Mortgage Solutions, is to be paid in full from the sale proceeds; thus, there is no need for an order approving the sale free and clear of that lien. The court need not determine whether the failure of a secured creditor to object to a sale free and clear of its interest after receiving notice constitutes the required consent, as the debtor asserts, because even if that were so, there is no notice in the moving papers that the requested "free and clear" aspect of the sale order would apply to the liens of the IRS, the Franchise Tax Board, and the homeowners' association, which, as already stated, were not mentioned in the moving papers.

As a result of the notice defect described above, the court intends to deny the motion. The court will hear the matter.

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16. 17-25986-D-13 BEVERLY LUCIO MOTION FOR RELIEF FROM
AMM-1 AUTOMATIC STAY
U.S. BANK, N.A. VS. 4-24-18 [40]

DEBTOR DISMISSED: 09/26/2017

17. 17-21796-D-13 ARMANDO COVARRUBIAS MOTION TO MODIFY PLAN
TOG-4 4-13-18 [77]

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.

18. 18-21606-D-13 PHILLIP/KIMBERLY ORTIZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
5-11-18 [15]

19. 18-21534-D-13 HECTOR/MARIA PEREZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
5-11-18 [19]

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20. 18-21737-D-13 ANGELO/CRYSTAL KNIGHT OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
5-11-18 [32]

Final ruling:

This is the trustee's objection to confirmation of the debtors' proposed chapter 13 plan. On May 14, 2018, the debtors 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.

21. 18-21253-D-13 INGRID CONTRERAS CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
4-30-18 [17]

22. 18-21657-D-13 ROBERT/JENNIFER WILLIAMS OBJECTION TO CONFIRMATION OF
RDG-3 PLAN BY RUSSELL D. GREER
5-11-18 [32]

23. 18-21661-D-13 GERARDO LARA AND NORMA OBJECTION TO CONFIRMATION OF
RDG-1 CAMARENA PLAN BY RUSSELL D. GREER
5-14-18 [21]

24. 17-21791-D-13 PATRICIA BROWN
MET-1
CORNERSTONE CAPITAL
INVESTMENTS, LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
5-18-18 [113]