

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

June 18, 2019 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.	19-22805-D-13 MC-1	RICKY MORRIS AND JHALAINNA CASTANEDA	MOTION TO VALUE COLLATERAL OF FIRST INVESTORS SERVICING CORPORATION 5-21-19 [15]
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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.

2. 19-20608-D-13 CHE LUCKY
MSN-1

MOTION TO CONFIRM PLAN
4-19-19 [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.

3. 19-20808-D-13 KARL VALDEZ
RWF-1

MOTION TO CONFIRM PLAN
5-3-19 [17]

Final ruling:

The relief requested in the motion is supported by the record and the only opposition that was filed has since been withdrawn. 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.

4. 19-23209-D-13 ANITA TROTTY
PR-1
GATEWAY CROSSING HOLDINGS,
LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
5-23-19 [10]

Final ruling:

This case was dismissed on June 7, 2019. As a result the motion will be denied by minute order as moot. No appearance is necessary.

5. 18-21214-D-13 JOSE PATINO
PGM-2

MOTION TO INCUR DEBT
5-8-19 [68]

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 to incur debt is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order that has been signed off as to form by the Trustee. No appearance is necessary.

6. 19-22414-D-13 JOHN STROH MOTION FOR RELIEF FROM
EAT-1 AUTOMATIC STAY
NATIONSTAR MORTGAGE, LLC 5-9-19 [11]
VS.

DEBTOR DISMISSED: 04/29/2019

7. 19-20616-D-13 HASSAN/JASMINE ROBINSON MOTION TO CONFIRM PLAN
MJH-1 4-25-19 [24]

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. 19-23217-D-13 ALBERTO VAZQUEZ-GARCIA MOTION TO EXTEND AUTOMATIC STAY
MMN-1 5-20-19 [9]

9. 18-26522-D-13 ALICIA BROWN-RILEY MOTION TO CONFIRM PLAN
FF-3 5-7-19 [61]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. On June 13, 2019, the debtor filed a different amended plan and a motion to confirm it. As a result of the filing of the new amended plan, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

10. 18-26123-D-13 TIMOTHY GARRY
SMJ-4

MOTION TO CONFIRM PLAN
5-8-19 [54]

Final ruling:

This is the debtor's motion to confirm a second amended chapter 13 plan. The motion will be denied because the proof of service is insufficient. The proof of service evidences service of "Debtor's Chapter 13 Plan," whereas the plan filed with the motion is titled "Second Amended Chapter 13 Plan." The proof of service might refer to either of the two earlier plans, simply titled "Chapter 13 Plan." Further, the titles of the motion and supporting declaration filed with the court refer to an Amended Chapter 13 Plan, whereas the titles of those moving papers, as listed in the proof of service, refer only to a "Chapter 13 Plan."

A proof of service is required to clearly identify the documents served; typically, this is accomplished by including in the proof of service the exact titles of those documents. Here, however, the plan, motion, and supporting declaration are identified differently in the titles of the documents filed with the court and the titles in the proof of service. This is the second time the court has drawn the moving party's attention to this type of defect in the proof of service.

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

11. 17-25225-D-13 CHRIS NGUYEN AND AMANDA
MC-3 CHANG

MOTION TO MODIFY PLAN
5-1-19 [61]

12. 19-21229-D-13 MELISSA ELIZABETH SIMPSON
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
4-22-19 [14]

13. 19-21229-D-13 MELISSA ELIZABETH SIMPSON
TBK-1

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA, INC.
4-25-19 [17]

Tentative ruling:

This is the debtor's motion to value collateral of Santander Consumer USA Inc.; namely, a 2016 Honda Accord, at \$12,134. The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the court is not prepared to grant the motion because the moving party's evidence does not demonstrate she is entitled to the relief requested, as required by LBR 9014-1(d)(3)(D).

The debtor testifies she used Edmunds.com to value the vehicle. She states she entered the vehicle's year, make, model, condition, and mileage, and Edmunds came up with a value the debtor believes "reflects the approximate replacement cost of a like vehicle." However, the debtor acknowledges, and the Edmunds.com printout attached to her declaration is clear, the \$12,134 value is the private party value.

By contrast, pursuant to § 506(a)(2) of the Bankruptcy Code, a secured claim is to be valued based on the replacement value of the collateral securing the claim. For property acquired for personal, family, or household purposes, "replacement value" means the price a retail merchant would charge for property of the same kind considering the age and condition of the debtor's property.¹ The appropriate standard is not the amount the owner would receive if he or she sold the vehicle to a private party; it is the amount a retail merchant would charge for the vehicle. As a general rule, where a debtor submits some evidence of a vehicle's replacement value and the creditor does not oppose the motion, the court will accept the debtor's evidence as carrying some weight, sometimes sufficient to carry the day. Here, however, the debtor seeks to value the vehicle not at its replacement value but at its private party value.

As a result of this evidentiary defect, the court intends to deny the motion. In the alternative, the court will grant the motion in part and value the secured claim at \$13,526, which is the "dealer retail" value, according to the Edmunds report filed by the moving party, which the court finds to be akin to the replacement value; that is, the value a retail merchant would charge. The court will hear the matter.

1 The debtor does not own her own business, and on the Retail Installment Sale Contract, she did not check the box indicating the vehicle was to be used for business or commercial purposes, thereby letting it stand that the vehicle was to be used for personal, family, or household purposes.

14. 18-21534-D-13 HECTOR/MARIA PEREZ
BSH-5

MOTION TO MODIFY PLAN
5-7-19 [107]

15. 19-21735-D-13 JOHN MUNOZ
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
5-14-19 [15]

Final ruling:

This is the trustee's objection to the debtor's claim of exemption on the ground the debtor has exceeded the allowable amount of his homestead exemption given his wife's claim of exemption in her separate case. On May 15, 2019, the debtor filed an amended Schedule C on which he reduced the amount of his claimed exemption. As a result of the filing of the amended Schedule C, the objection will be overruled as moot by minute order. No appearance is necessary.

16. 19-20036-D-13 JASWINDER SINGH
MJH-2

MOTION TO CONFIRM PLAN
5-3-19 [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.

17. 19-20441-D-13 CAROLYN VALDEZ
MKM-2

MOTION TO CONFIRM PLAN
5-2-19 [23]

18. 18-24845-D-13 VICTOR HERRADA
PGM-4

CONTINUED MOTION TO CONFIRM
PLAN
3-12-19 [77]

19. 18-27745-D-13 JUAN/MARIA SALAS

CONTINUED ORDER TO SHOW CAUSE
4-24-19 [70]

DEBTORS DISMISSED:
05/23/2019

20. 19-20248-D-13 VALERIE MARIN
HWW-3

MOTION TO CONFIRM PLAN
5-4-19 [44]

21. 19-20749-D-13 MIKE/THELMA DOUGHERTY
RDG-2

OBJECTION TO DEBTORS' CLAIM OF
EXEMPTIONS
5-13-19 [47]

Final ruling:

This is the trustee's objection to the debtors' claim of exemption of \$8,550 in business inventory pursuant to Cal. Code Civ. Proc. § 704.060, which exceeds the limit under that statute. On May 20, 2019, the debtors filed an amended Schedule C on which they reduced the amounts claimed under that code section to a total amount less than the statutory limit. As a result of the filing of the amended Schedule C, the present objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

22. 16-21360-D-13 PARAM SAINI AND SATNAM
CLH-3 KAUR

MOTION TO AVOID LIEN OF PAULINE
H. MCDONALD
5-23-19 [37]

Final ruling:

This is the debtors' motion to avoid a judicial lien allegedly held by Pauline H. McDonald, trustee of the D&P McDonald Trust Dated August 20, 1999 ("McDonald"). The motion will be denied for the following reasons. First, the notice of hearing gives an incorrect address as the location of the courtroom where the hearing is to be held ("1200 I Street, Dept. D, 6th Floor, Sacramento"). A correct address is especially important where, as here, the motion is noticed under LBR 9014-1(f)(2) and a party may oppose the motion by appearing at the hearing. Second, the motion is not accompanied by evidence establishing its factual allegations and demonstrating that the moving parties are entitled to the relief requested, as required by LBR 9014-1(d)(6).

"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)." Goswami v. MTC Distrib. (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) (emphasis added, internal quotation marks omitted). In this case, the debtors have not claimed as exempt any interest in the property against which they seek to avoid the lien. (The motion states that the debtors' equity in the property was listed as exempt property in the debtors' Schedule of Property Claimed as Exempt, but that is not the case. The debtors' Schedule C does not include any claim of exemption in the property.) Thus, the debtors have not established they are entitled to relief under § 522(f)(1)(A).

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

23.	19-21564-D-13	BENNY KLINE AND SHERRAL	CONTINUED MOTION TO CONFIRM
	JCK-2	THIERRY-KLINE	PLAN
			4-11-19 [15]

Final ruling:

The relief requested in the motion is supported by the record and the only opposition that was filed has since been withdrawn. 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.

24.	19-20973-D-13	ALBERT/MARY HAYNES	CONTINUED OBJECTION TO
	RDG-1		CONFIRMATION OF PLAN BY RUSSELL
			D GREER
			4-8-19 [15]

25.	19-21573-D-13	SHANNON FOLEY	CONTINUED MOTION TO DISMISS
	RDG-1		CASE
			5-7-19 [21]

26.	19-21377-D-13	LYNN SALERNO	MOTION TO CONFIRM PLAN
	FF-02		5-6-19 [32]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because there is no proof of service on file. The motion will be denied by minute order. No appearance is necessary.

27.	17-21381-D-13	SANDRA SANDERS	MOTION TO MODIFY PLAN
	PGM-3		5-2-19 [86]

28.	18-27891-D-13	LAWRENCE/JENNY BOLDON	MOTION TO CONFIRM PLAN
	BSH-5		5-2-19 [59]

29. 19-22891-D-13 VERNON/RHONDA SMITH
WW-2

MOTION TO AVOID LIEN OF
CITIBANK SOUTH DAKOTA, N.A.,
MOTION TO AVOID LIEN OF ASSET
ACCEPTANCE, MOTION TO AVOID
LIEN OF UNIFUND CCR PARTNERS
AND/OR MOTION TO AVOID LIEN OF
ASSET ACCEPTANCE, LLC
5-20-19 [19]

Final ruling:

This is the debtors' motion to avoid two judicial liens and two purported judicial liens. The motion will be denied for the following reasons. First, none of the potential respondents was served in strict compliance with Fed. R. Bankr. P. 7004(b)(3) or (h), as applicable, as required by Fed. R. Bankr. P. 9014(b). The moving parties served lienholder Citibank (South Dakota) N.A. only through the attorneys who obtained its abstract of judgment, whereas Citibank has not appeared in this case through an attorney (Rule 7004(h), subd. (1)); thus, Citibank was required to be served by certified mail to the attention of an officer (Rule 7004(h)).

The moving parties served lienholder Unifund only through the attorneys who obtained its abstract of judgment, whereas there is no evidence those attorneys are authorized to receive service of process on behalf of Unifund in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004). The moving parties served Asset Acceptance, LLC, purportedly the holder of two judicial liens, (1) at a post office box with no attention line; and (2) through the attorneys who obtained its abstracts of judgment. The first method was insufficient because a corporation, partnership, or other unincorporated association must be served to the attention of an officer, managing or general agent, or agent for service of process (Rule 7004(b)(3)), whereas here, there was no attention line. The second method was insufficient because, as with Unifund, there is no evidence those attorneys are authorized to accept service on behalf of Asset Acceptance.

Second, as to the two purported liens of Asset Acceptance, LLC, the debtor has failed to submit admissible evidence supporting all the elements of an avoidable lien. The only evidence in support of the motion is the debtor's declaration and copies of unrecorded abstracts of judgment in favor of Asset Acceptance. The debtor testifies that as of the time of the bankruptcy filing, Asset Acceptance had filed two abstracts of judgment with the San Joaquin County Recorder, and he gives the dates on which those abstracts were purportedly "filed." His testimony is inadmissible as hearsay. As already indicated, the copies of the abstracts of judgment bear no recording information.

In order to avoid a judicial lien, "the debtor must make a competent record on all elements of the lien avoidance statute, 11 U.S.C. § 522(f)" (In re Mohring, 142 B.R. 389, 391 (Bankr. E.D. Cal. 1992)), including that the creditor has a lien that is a judicial lien. Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting Mohring, 142 B.R. at 392. "The operative principle here is that although bankruptcy confers substantial benefits on the honest but unfortunate debtor, including a discharge of debts, the ability to retain exempt property, and the ability to avoid certain liens that impair exemptions, there is a price." Mohring, 142 B.R. at 396. Obtaining a copy of a recorded abstract of

judgment seems a small price to pay to avoid an otherwise valid and enforceable property interest.

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

30.	18-21895-D-13	TRACI BARKLEY	MOTION TO MODIFY PLAN
	SLH-1		5-14-19 [28]

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.

31.	19-22104-D-13	GLORIA/DOMINGO REYES	OBJECTION TO CONFIRMATION OF
	RDG-1		PLAN BY RUSSELL D. GREER
			5-24-19 [14]

32.	18-27726-D-13	EDWARD COLOMA AND	MOTION TO SELL
	JBR-2	KATHERINE SANCHEZ	6-2-19 [62]

Tentative ruling:

This is the debtors' motion to sell certain real property. The court intends to continue the hearing because the moving parties gave only 16 days' notice of the hearing rather than the 21 days' required by Fed. R. Bankr. P. 2002(a)(2).

The court also advises the moving parties it will not approve the sale pursuant to § 363(f), as the moving parties have not made a showing sufficient for such approval. Once proper notice has been given, and assuming there is no opposition to the motion, the sale will be approved pursuant to § 363(b), which should be sufficient for the debtors' purposes.

The court will hear the matter.

33. 19-22134-D-13 MAGDALENA ALVARADO
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
5-24-19 [29]

34. 19-22134-D-13 MAGDALENA ALVARADO
RDW-1

OBJECTION TO CONFIRMATION OF
PLAN BY AJAX MORTGAGE LOAN
TRUST 2018-F
5-29-19 [35]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

35. 19-21036-D-13 JULIE/GREGORY RENWICK
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
4-22-19 [23]

36. 19-21036-D-13 JULIE/GREGORY RENWICK
APN-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TOYOTA
MOTOR CREDIT CORPORATION
3-27-19 [16]

37.	19-21950-D-13 RDG-1	NELSON SANCHEZ	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-24-19 [15]
38.	19-21573-D-13 RDG-2	SHANNON FOLEY	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D GREER 5-13-19 [25]
39.	19-23385-D-13 PGM-1	SHELDON/ANGIE SMITH	MOTION TO EXTEND AUTOMATIC STAY 6-3-19 [11]
40.	18-27891-D-13 BSH-4	LAWRENCE/JENNY BOLDON	MOTION TO VALUE COLLATERAL OF SYNCHRONY BANK KAWASAKI 5-30-19 [69]