

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

June 20, 2017 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.	17-20006-D-13	THOMAS/RACHEL ESPARZA	CONTINUED MOTION TO CONFIRM
	MSN-1		PLAN
			3-27-17 [26]

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.

Tentative ruling:

This is the trustee's objection to the debtors' claim of exemption in a 2013 Hyundai Elantra pursuant to Cal. Code Civ. Proc. ("CCP") §704.060(d). The objection was filed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the debtors did file a second amended Schedule C three days after the trustee filed this objection. (The objection was to the debtors' first amended Schedule C, filed May 2, 2017.) Ordinarily, the filing of the second amended Schedule C would render the trustee's objection moot. In this instance, however, due to the nature of the exemption claimed in the second amended Schedule C, the court will hear from the trustee as to whether he wants the present objection to be treated as an objection to the second amended Schedule C. If so, the court will continue the hearing to permit the debtors to file opposition and the trustee to file a reply.

On their first amended Schedule C - the one the trustee objected to - the debtors claimed as exempt \$5,269 in value in the vehicle, a vehicle they scheduled as being worth \$8,439. They claimed the exemption under two different code sections - CCP § 704.010 (motor vehicles) and § 704.060(d) (commercial motor vehicles constituting tools of the trade), without specifying the amount claimed under each section. The trustee construed the amended Schedule C as claiming the full amount of the exemption under § 704.060(d) - a reasonable construction given that the debtors chose not to divide the total amount as between the two code sections. In his objection, the trustee requested the debtors provide proof the vehicle is a commercial vehicle. Without such evidence, the trustee contended, he was unable to determine whether the exemption was properly claimed.

On their second amended Schedule C, filed after the trustee's objection was filed, the debtors increased the amount of the claimed exemption from \$5,269 to \$8,419, which they divided as follows: they claimed \$419 under § 704.010 and \$8,000 under "§ 704.060(1)." There is no subsection (1) in § 704.060. In any event, however, it is clear the debtors are still claiming a significant portion of the value of the vehicle - \$8,000 - as exempt under § 704.060 - the "tools of the trade" exemption. Yet they have failed to file anything regarding the trustee's request that they prove the vehicle is a commercial vehicle (which is the category of motor vehicles § 704.060 permits a debtor to exempt). It may be the debtors have provided this information to the trustee; the court simply cannot tell. If they have not, however, and if the trustee wants his present objection to be construed as applying to the debtors' second amended Schedule C, it would cause unnecessary effort, expense, and delay to overrule this objection as moot and require the trustee to file a new one.

Therefore, the court will hear the matter to determine how the trustee wishes to proceed. If he wants the present objection construed as applying to the newly-claimed exemption, the court will continue the hearing and set a briefing schedule. The trustee will need to provide notice to the debtors and their counsel if their counsel does not appear at the hearing.

3. 09-27513-D-13 THOMAS GRUDEM AND ERIN MOTION TO AVOID LIEN OF SELECT
RAI-4 HICKEY-GRUDEM PORTFOLIO SERVICING, INC.
AND/OR MOTION FOR CONTEMPT
5-12-17 [89]

Final ruling:

This matter has been continued to July 18, 2017 at 10:00 a.m. by stipulation of the parties, which has been approved by the court.

4. 17-21715-D-13 BERENICE GRANTHAM OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
5-12-17 [23]

Final ruling:

This case was dismissed on May 24, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

5. 12-29222-D-13 KYLE/TRACY TROCHE MOTION FOR COMPENSATION FOR
PGM-4 PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
5-22-17 [118]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

6. 17-22725-D-13 DEBBIE/TERESA BROWN MOTION TO VALUE COLLATERAL OF
RWF-1 WELLS FARGO DEALER SERVICES
5-12-17 [12]

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.

7. 17-21330-D-13 HOWARD/MARJORIE BINDER MOTION TO CONFIRM PLAN
HWW-3 5-8-17 [30]

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. 17-21930-D-13 FERGUS/KAREN MCDOUGALL OBJECTION TO DEBTORS' CLAIM OF
RDG-2 EXEMPTIONS
5-12-17 [20]

Final ruling:

This is the trustee's objection to the debtors' claims of exemption. On May 24, 2017, the debtors filed an amended Schedule C. 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.

9. 17-20933-D-13 MONICA HERRERA OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
5-12-17 [39]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response has been filed. The objection is supported by the record. The court will sustain the trustee's objection to claim of exemption. Moving party is to submit an appropriate order. No appearance is necessary.

10. 17-22537-D-13 RAJ BIRDI MOTION FOR RELIEF FROM
NLG-1 AUTOMATIC STAY
BOSCO CREDIT, LLC VS. 5-12-17 [12]

11. 12-26339-D-13 RONALD/DARLA BERG
JCK-4

MOTION TO MODIFY PLAN
5-12-17 [79]

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.

12. 17-22244-D-13 KRISTEN MILLARD
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
5-26-17 [23]

Tentative ruling:

This is the trustee's objection to confirmation of the debtor's chapter 13 plan. The objection was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The trustee's objection is that the plan provides for claims of Financial Center Credit Union on accounts ending in -2701 and -2703 at \$0 based on the value of the Credit Union's collateral, whereas the debtor has not obtained orders valuing the collateral. The debtor has filed motions to value collateral of the Credit Union, set for hearing on July 6, 2017. However, in the court's view, those motions, if granted, will not be sufficient to resolve the trustee's concerns or to permit the court to confirm the plan. Thus, the court intends to sustain the objection.

The debtor's plan, schedules, and motions to value create considerable confusion. First, on her Schedule B, the debtor scheduled one vehicle, a 2014 Kia Optima, which she values at \$10,790, yet on her Schedule D, she listed three different loans owed to the Credit Union, all listed as secured by the Kia Optima, in the amounts of \$11,354, \$9,307, and \$1,940. The schedule lists the loans as ending in -2702, -2701, and -2703, respectively. The Credit Union is not listed on the debtor's Schedule E/F at all. The motions to value, DC Nos. JTN-1 and JTN-2, in one respect seek the same relief, and in another respect - the respect in which they are different - seek to value loans ending in numbers that do not appear on the schedules at all. And they do not mention the loan numbers listed on the schedules at all. Thus, first, in both motions, the debtor seeks "to value the collateral of [the Credit Union]"; namely, the Kia Optima, at \$10,790. The fact that the same relief is sought in both motions suggests at first that there are two different Kia Optimas which happen to have the same value. To make matters worse, the motions do not identify by loan number the loan for which the valuation is sought. That is, they do not identify the particular secured claim sought to be valued.

Second, the motions state that, in addition to what they refer to as the "Auto loan," the debtor has two other loans with the Credit Union - loans ending in -2141 and -6905, which the motions describe as a consolidation loan or "Loan 1C" and a

personal loan or "Signature Loan 3," neither of which is listed on the debtor's schedules. The motions do not refer by number to any of the three loans listed on the debtor's Schedule D - the ones ending in -2702, -2701, and -2703. The motions state the debtor has learned since the case was filed that the loans ending in -2141 and -6905 are unsecured. Thus, the motions seek to "value the claims" as "general unsecured claims." DC No. JTN-1 seeks to value the claim for the loan ending in -2141 as a general unsecured claim and JTN-2 seeks to value the claim for the loan ending in -6905 as a general unsecured claim.

The debtor's proposed plan, moreover, lists three secured claims for the Credit Union - all three are listed in Class 2, and none is listed by loan number. The first one is described as "auto loan on 2014 Kia" with the claim amount at \$11,354 and the debtor's valuation at \$10,790. The other two are described as "collateral loan on 2014 Kia," in claim amounts of \$9,304 and \$1,940, respectively, with the debtor's valuation of both claims listed at \$0 "based on value of collateral."

The trustee assumes the loans listed in Class 2 of the plan with values of \$0 are the loans ending in -2701 and -2703, but the plan does not list any loan numbers. In any event, the plan cannot be confirmed because it provides for two loans that are listed in the plan as secured (that is, in Class 2) at values of \$0, whereas the debtor has not obtained, and will not, through the motions to value set for July 6, 2017, be able to obtain orders valuing the collateral securing those claims at \$0. A motion to value collateral is just that - a motion to value collateral the debtor acknowledges exists, such as a car or a house. A motion to value is not a vehicle for determining whether a claim is secured or unsecured. That type of determination can only be made through an adversary proceeding. Fed. R. Bankr. P. 7001(2).

The court is not suggesting the debtor will need to file adversary complaints in this case - the court will leave it to counsel to determine how to address the Credit Union's various loans. In any event, however, the present plan cannot be confirmed because it would treat two of the Credit Union's purportedly secured claims as being worth \$0 based solely on the value of the collateral allegedly securing the claims, whereas the debtor has not undertaken any procedure that would be effective to reduce the value of the vehicle to \$0 or to determine the claims to be unsecured.

The court will hear the matter.

13. 16-25745-D-13 PHILLIP HAMMONS
DCJ-4

MOTION TO CONFIRM PLAN
5-9-17 [74]

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 14, 2017. The second amended plan makes a few extremely minor changes to the first amended plan.¹ The motion states that the first amended plan "was denied confirmation . . . because of the Debtor's failure to provide documents to [the trustee] rather than any defects in the plan itself." Debtor's Motion, DN 74, at 1:23-25. Yet the trustee's opposition to this motion is, with one exception, identical to his opposition to the first amended plan. The exception is that the trustee has now

added the debtor's 2016 tax returns as among the documents that have not been provided. The prior opposition and the current one both state the debtor has failed to provide the required tax returns, the requested year-to-date profit and loss statement, and the requested liability insurance rider.

The case has been pending since August 30, 2016 without a confirmed plan. 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.

1 The second amended plan decreases the monthly contract installment on one mortgage debt by \$29 and on another by 87 cents, increases the amount of the IRS's secured claim by \$1,000 (from \$25,206 to \$26,206), and adds a provision that the Class 1 claim of Nationstar Mortgage shall be paid as provided in Section 2.08 of the plan notwithstanding that relief from stay has been granted.

14. 17-22251-D-13 BRIAN GEGARIAN OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
5-26-17 [23]

15. 17-22261-D-13 DEBRA LONDON OBJECTION TO CONFIRMATION OF
AP-1 PLAN BY WELLS FARGO BANK, N.A.
5-16-17 [13]

Final ruling:

This case was dismissed on May 23, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

16. 17-21079-D-13 CAROL/BOBBIE STEPPS CONTINUED MOTION TO VALUE
CLH-1 COLLATERAL OF STATE OF
CALIFORNIA FRANCHISE TAX BOARD
4-25-17 [33]

17. 17-21079-D-13 CAROL/BOBBIE STEPPS
CLH-2

CONTINUED MOTION TO VALUE
COLLATERAL OF THE UNITED STATES
INTERNAL REVENUE SERVICE
4-25-17 [37]

18. 17-21381-D-13 SANDRA SANDERS
RDG-2

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
4-24-17 [18]

Tentative ruling:

This is the trustee's objection to confirmation of the debtor's chapter 13 plan. The hearing was continued and the debtor has filed supplemental evidence. The objection centers around what the trustee claims to be tax overwithholding by the debtor. In her supplemental declaration, the debtor states she has reviewed the proofs of claim filed by the IRS and the Franchise Tax Board and does not believe they reflect the tax refunds for 2016 the debtor says were paid by way of setoff by the IRS and the FTB. The court has this question. On her Schedule E, the debtor listed the IRS as being owed \$68,100, of which only \$1.00 qualified as a priority claim. The debtor did not include the IRS on her Schedule D as a secured creditor. Yet the IRS has filed a proof of claim for \$67,347.97, of which \$17,508 is claimed as secured and \$1,422.80 as priority unsecured. The plan provides only for the \$1.00 priority amount listed on the debtor's Schedule E. It does not provide for any secured claim of the IRS. The debtor has not filed an objection to the IRS's claim or a motion to value its collateral.

Because it does not provide for the secured claim of the IRS or for the full amount of the priority unsecured claim, it appears the plan is not feasible. The court will hear the matter.

19. 15-27287-D-13 GINA TOSCANO
PGM-4

CONTINUED OBJECTION TO NOTICE
OF MORTGAGE PAYMENT CHANGE
2-8-17 [62]

Tentative ruling:

This is the debtor's objection to the Notice of Mortgage Payment Change filed by JPMorgan Chase Bank (the "Bank") on January 4, 2017. The Bank filed opposition and the hearing was continued three times pursuant to stipulations of the parties. In the meantime, the debtor filed a modified plan that provided for an ongoing mortgage payment in the amount of \$1,432.41, just \$2.47 short of the \$1,434.88 set forth in the January 4, 2017 Notice as the new mortgage payment. The trustee filed opposition to the debtor's motion to confirm the modified plan, and in reply, the debtor conceded the mortgage payment should be \$1,434.88, the same as set forth in the January 4, 2017 Notice, and also conceded the trustee's position as to the amount of the post-petition arrears due the Bank. Thus, it appears the debtor concedes the accuracy of the January 4, 2017 Notice and the court intends to overrule this objection.

The court will hear the matter.

20. 17-20487-D-13 SCOTT/ANNA JOHNSON
PGM-1

MOTION TO CONFIRM PLAN
5-1-17 [37]

21. 17-22589-D-13 JEFFREY/ERIN MILLER
CLH-1

MOTION TO VALUE COLLATERAL OF
VALLEY FIRST CREDIT UNION
5-22-17 [12]

Tentative ruling:

This is the debtors' motion to value collateral of Valley First Credit Union; namely, a 2010 Toyota Prius. 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, whether the debt is secured by a purchase money security interest, or whether the vehicle was acquired for the personal use of the debtors. The debtors' schedules indicate the debt was incurred within 910 days prior to the filing of this case; they provide no information as to the other two questions, except that the debtors' Schedule I indicates they are both employed and not engaged in their own business; thus, it appears the vehicle was acquired for personal use. The court has examined the attachments to the Credit Union's proof of claim, although this is an exercise the court should not have to undertake, and determined that the loan was in fact incurred within the 910-day period. There are boxes on the loan agreement and disclosure statement attached to the proof of claim for indicating whether "the proceeds of the loan are purchase money" or "the security is owned by me"; however, neither box is checked.

The debtors have the burden of demonstrating they are entitled to value the claim at less than its full amount; that is, that they meet the requirements of the hanging paragraph following § 1325(a)(9). Here, the debtors have failed to carry that burden and the motion will be denied. Alternatively, if the debtor believes 506(a) relief is available to them, the court will continue the hearing to allow them to supplement the evidentiary record. The court will hear the matter.

22. 17-22589-D-13 JEFFREY/ERIN MILLER
CLH-2

MOTION TO VALUE COLLATERAL OF
VALLEY FIRST CREDIT UNION
5-22-17 [16]

Tentative ruling:

This is the debtors' motion to value collateral of Valley First Credit Union; namely, a 2010 Subaru Tribeca. 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, whether the debt is secured by a purchase money

security interest, or whether the vehicle was acquired for the personal use of the debtors. Nor do the debtors' schedules provide any of this information, except that their Schedule I indicates they are both employed and not engaged in their own business; thus, it appears the vehicle was acquired for personal use. The court has examined the attachments to the Credit Union's proof of claim, although this is an exercise the court should not have to undertake, and determined that the loan was in fact incurred within the 910-day period. There are boxes on the loan agreement and disclosure statement attached to the proof of claim for indicating whether "the proceeds of the loan are purchase money" or "the security is owned by me"; however, neither box is checked.

The debtors have the burden of demonstrating they are entitled to value the claim at less than its full amount; that is, that they meet the requirements of the hanging paragraph following § 1325(a)(9). Here, the debtors have failed to carry that burden and the motion will be denied. Alternatively, if the debtor believes 506(a) relief is available to them, the court will continue the hearing to allow them to supplement the evidentiary record. The court will hear the matter.

23. 17-22396-D-13 CYNTHIA/PAUL MARSH
RCO-1

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
5-24-17 [41]

24. 17-22407-D-13 SERGIO ZAMORA
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
5-26-17 [32]

25. 12-26173-D-13 FRANK/LILLIE LOPEZ
JAD-5

MOTION FOR WAIVER OF THE
CERTIFICATION REQUIREMENTS FOR
ENTRY OF DISCHARGE IN A CHAPTER
13 CASE
6-1-17 [74]

26. 17-21079-D-13 CAROL/BOBBIE STEPPS
CLH-3

CONTINUED MOTION TO CONFIRM
PLAN
4-24-17 [26]

27. 17-21791-D-13 PATRICIA BROWN
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
5-12-17 [26]