

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

July 2, 2019 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.	19-23100-D-13	REVOYDA STARLING	MOTION TO VALUE COLLATERAL OF
	MJH-1		ONEMAIN FINANCIAL
			5-16-19 [8]

Tentative ruling:

This is the debtor's motion to value collateral of OneMain Financial, a 2014 VW Jetta, at \$9,275. The motion was noticed under LBR 9014-1(f)(1) and no opposition has been filed. However, the debtor has failed to demonstrate she is entitled to the relief requested, as required by LBR 9014-1(d)(3)(D).

The debtor testifies OneMain holds a purchase money security interest in the vehicle. The debtor's Schedule I indicates she is employed and, according to her statement of affairs, she has had no income from operation of a business in 2017, 2018, or 2019. Thus, it appears the vehicle was acquired for the debtor's personal use. The moving papers do not indicate when she incurred the debt to OneMain, but the debtor's Schedule D indicates it was incurred in March of this year, just two months prior to the bankruptcy filing. Thus, it appears OneMain's claim falls within the scope of the hanging paragraph following § 1325(a)(9) and the debtor is not entitled to "strip down" the claim. The court will hear the matter.

2. 19-22502-D-13 JEFFERY/JEANETTE GATLIN  
JHW-1  
OBJECTION TO CONFIRMATION OF  
PLAN BY TD AUTO FINANCE, LLC  
5-29-19 [19]
3. 19-21406-D-13 YONSON GESCAT  
MEV-2  
MOTION TO CONFIRM PLAN  
5-13-19 [37]
4. 17-24412-D-13 JEANINE DAVIS  
PGM-5  
CONTINUED MOTION TO MODIFY PLAN  
4-18-19 [165]
5. 17-24412-D-13 JEANINE DAVIS  
SSA-5  
THOMAS AND FRANCES CASTANEDA  
FAMILY TRUST VS.  
CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY AND/OR  
MOTION FOR ADEQUATE PROTECTION  
5-6-19 [176]

6. 17-24412-D-13 JEANINE DAVIS CONTINUED MOTION FOR  
SSA-6 COMPENSATION FOR STEVEN S.  
ALTMAN, CREDITORS' ATTORNEY(S)  
5-10-19 [185]

7. 19-20016-D-13 GARY BITZ MOTION TO CONFIRM PLAN  
HWW-3 5-28-19 [43]

8. 14-28026-D-13 MIGUEL/MARTHA GOMEZ MOTION TO AVOID LIEN OF ASSET  
RLG-3 ACCEPTANCE, LLC  
6-4-19 [124]

**Final ruling:**

**Motion withdrawn by moving party. Matter removed from calendar.**

9. 18-28033-D-13 MARY NEVIS MOTION TO CONFIRM PLAN  
LT-2 5-14-19 [51]

**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.

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|-----|---------------|-----------------------------|--|
| 10. | 19-22134-D-13 | MAGDALENA ALVARADO<br>RDG-2 | OBJECTION TO DEBTOR'S CLAIM OF<br>EXEMPTIONS<br>5-24-19 [32]                         |
| 11. | 18-27837-D-13 | THOMAS/ROSEMARY<br>RDG-2    | OBJECTION TO CLAIM OF<br>SAFEAMERICA CREDIT UNION, CLAIM<br>NUMBER 7<br>5-29-19 [27] |
| 12. | 18-27837-D-13 | THOMAS/ROSEMARY<br>RDG-3    | OBJECTION TO CLAIM OF<br>SAFEAMERICA CREDIT UNION, CLAIM<br>NUMBER 8<br>5-29-19 [30] |
| 13. | 18-27837-D-13 | THOMAS/ROSEMARY<br>RDG-4    | OBJECTION TO CLAIM OF<br>SAFEAMERICA CREDIT UNION, CLAIM<br>NUMBER 9<br>5-29-19 [33] |

14. 18-27740-D-13 HENRIETTA DEBROUWER  
MJD-3

MOTION TO CONFIRM PLAN  
5-14-19 [55]

**Final ruling:**

This is the debtor's motion to confirm a second amended chapter 13 plan. On June 21, 2019, the debtor filed a third amended plan and a motion to confirm it. As a result of the filing of the third amended plan, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

15. 19-20441-D-13 CAROLYN VALDEZ  
MKM-3

MOTION TO VALUE COLLATERAL OF  
JPMORGAN CHASE BANK, N.A.  
5-30-19 [33]

**Final ruling:**

This is the debtor's motion to value collateral of JPMorgan Chase Bank, N.A. (the "Bank") a 2010 Chrysler 300. The motion will be denied because the moving party failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Bank through the attorneys who filed its proof of claim in this case, whereas those attorneys have not made an appearance in this case sufficient to authorize service on them pursuant to subd. (1) of Rule 7004(h) for purposes of adversary proceedings and contested matters.

Attached to the proof of claim is a statement that reads:

This Proof of Claim shall not constitute a waiver of the within party's right to receive service pursuant to Fed. R. Civ. P. 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004 notwithstanding [the attorneys'] participation in this proceeding. Moreover, the within party does not authorize [the attorneys], either expressly or impliedly through [the attorneys'] participation in this proceeding, to act as its agent for purpose of service under Fed. R. Bankr. P. 7004.

The attorneys have not otherwise made an appearance in this case. As a result, the applicable rule is Rule 7004, not subd. (1) of that rule, and the moving party was required to serve the Bank by certified mail to the attention of an officer.

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

16. 19-20145-D-13 AUGUSTINE/ENEDINA GARCIA  
GTB-1

MOTION TO CONFIRM PLAN  
5-4-19 [28]

17. 19-22846-D-13 JOSE/ROCIO REYES  
RWF-1

MOTION TO VALUE COLLATERAL OF  
PATELCO CREDIT UNION  
5-24-19 [10]

**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.

18. 19-20749-D-13 MIKE/THELMA DOUGHERTY  
CLH-1

CONTINUED MOTION TO CONFIRM  
PLAN  
3-1-19 [15]

19. 19-20155-D-13 GERALDINE OSEI  
KRW-1

MOTION TO CONFIRM PLAN  
5-20-19 [39]

**Final ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the "attached service list" referred to in the proof of service is not attached. Thus, there is no evidence of service on anyone. The motion will be denied by minute order. No appearance is necessary.

20. 18-26758-D-13 TERRY/JACQUELINE THOMAS  
JAD-3

MOTION TO CONFIRM PLAN  
5-3-19 [59]

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for two reasons. First, the moving parties served the IRS, which has filed an amended claim for \$9,557, including \$8,824 claimed as priority, at the partial address of the Franchise Tax Board and failed to serve the IRS at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(c).1

Second, because the debtors' master address list includes the IRS at the Franchise Tax Board's partial address, the debtors have failed to comply with Fed. R. Bankr. P. 1007(a)(1), which requires a debtor to include on his or her master address list the names and addresses of all parties included or to be included on

his or her schedules. As a result, the court's creditor list, as reflected on the court's website for this case and on the PACER matrix, does not include the IRS at its Roster address. Thus, the IRS will not receive notices served by the Bankruptcy Noticing Center or by creditors in the case.

It is the moving parties' responsibility to serve the motion on all creditors, which, presumably, they will do when they file another motion. However, they also have a responsibility to be sure their master address list includes "each entity included . . . on Schedules D, E/F, G, and H . . ." (Fed. R. Bankr. P. 1007(a)(1)) at the entity's correct address. Thus, the plan cannot be confirmed because the debtors have failed to comply with their duty to file a complete and accurate list of creditors, as required by § 521(a)(1)(A), as implemented by Fed. R. Bankr. P. 1007(a)(1), and thus, have not complied with § 1325(a)(1).

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

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1 The IRS was served at the post office box number of the Franchise Tax Board in Sacramento (albeit without the Board's mailing code) rather than at the IRS's post office box number in Philadelphia. The fact that the IRS has filed a proof of claim does not mean it was not entitled to notice of this motion. The fact that the address appears incorrectly on the PACER matrix and the claims register apparently results from counsel's listing of the address incorrectly on the master address list (see below). It is counsel's responsibility to be sure governmental entities are scheduled and listed at their Roster addresses, and served at those addresses, regardless of how they appear on the PACER matrix or claims register.

This is the second motion the court has denied for these same reasons, but despite its ruling on the earlier motion, the errors have not been corrected.

21. 19-21461-D-13 OLIVIA MERCADO  
RWF-1

MOTION TO CONFIRM PLAN  
5-15-19 [17]

**Final ruling:**

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for two reasons. First, the moving party failed to serve the U.S. Social Security Administrative ("SSA"), scheduled as holding the second largest unsecured claim in the case, at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b).

Second, because the debtor's master address list does not include the SSA's Roster address, the debtor has failed to comply with Fed. R. Bankr. P. 1007(a)(1), which requires a debtor to include on his or her master address list the names and addresses of all parties included or to be included on his or her schedules. As a result, the court's creditor list, as reflected on the court's website for this case and on the PACER matrix, does not include the SSA at its Roster address, and the SSA will not receive notices served by the Bankruptcy Noticing Center or by creditors in the case.

It is the moving party's responsibility to serve the motion on all creditors, which, presumably, she will do when she files another motion. However, she also has a responsibility to be sure her master address list includes "each entity included . . . on Schedules D, E/F, G, and H . . ." (Fed. R. Bankr. P. 1007(a)(1)) at the entity's correct address. Thus, the plan cannot be confirmed because the debtor has failed to comply with her duty to file a complete and accurate list of creditors, as required by § 521(a)(1)(A), as implemented by Fed. R. Bankr. P. 1007(a)(1), and thus, has not complied with § 1325(a)(1).

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

22. 19-22672-D-13 ERICA ORTEGA  
APN-1

OBJECTION TO CONFIRMATION OF  
PLAN BY GLOBAL LENDING  
SERVICES, LLC  
5-15-19 [44]

**Final ruling:**

This case was dismissed on May 23, 2019. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

23. 19-22672-D-13 ERICA ORTEGA  
JM-1

OBJECTION TO CONFIRMATION OF  
PLAN BY LENDMARK FINANCIAL  
SERVICES, LLC  
5-14-19 [39]

**Final ruling:**

This case was dismissed on May 23, 2019. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

24. 19-20791-D-13 LOUIS LEMOS  
RDG-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
4-8-19 [18]



25. 18-24992-D-13 LIDIA QUEZADA  
GSL-3

MOTION TO CONFIRM PLAN  
5-24-19 [148]

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.

26. 19-22299-D-13 RICHARD/STACIE FRANK  
RWF-1

MOTION TO VALUE COLLATERAL OF  
FLAGSHIP CREDIT ACCEPTANCE, LLC  
5-28-19 [14]

Tentative ruling:

This is the debtors' motion to value collateral of Flagship Credit Acceptance, LLC ("Flagship"). 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 parties' evidence does not demonstrate they are entitled to the relief requested, as required by LBR 9014-1(d)(3)(D).

The collateral is a 2014 Dodge Charger. The debtors testify that in their opinion, the vehicle "was worth" \$10,418 when this case was filed. There is no indication how the debtors arrived at that value or what standard they were targeting. Flagship, on the other hand, filed as an attachment to its proof of claim an NADA Guides printout showing a clean retail value of \$12,025 for a similar vehicle, taking into account the mileage on the vehicle, according to the debtors.

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.<sup>1</sup> The appropriate standard is not what the vehicle "is worth"; it is the amount a retail merchant would charge for the vehicle. Here, the debtors have submitted no evidence as to this amount; Flagship, on the other hand, has submitted evidence from a source generally considered to be reliable.

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 \$12,025, which is less than the full amount of Flagship's claim. The court will hear the matter.

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1 The debtors do not own their own business, and on the Retail Installment Sale Contract, they 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.

27. 19-22299-D-13 RICHARD/STACIE FRANK  
RWF-2

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO DEALER SERVICES  
5-28-19 [18]

Tentative ruling:

This is the debtors' motion to value collateral of Wells Fargo Dealer Services. It appears from the creditor's opposition and proof of claim the actual creditor is Wells Fargo Bank, N.A. (the "Bank"). As indicated, the Bank has filed opposition. For the following reasons, the motion will be denied.

The collateral is a 2014 Nissan Versa. The debtors testify that in their opinion, the vehicle "was worth" \$5,039 when this case was filed. There is no indication how the debtors arrived at that value or what standard they were targeting. The Bank, on the other hand, has submitted an NADA Guides printout showing a clean retail value of \$6,500 for a similar vehicle, taking into account the mileage on the vehicle, according to the debtors.

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.<sup>1</sup> The appropriate standard is not what the vehicle "is worth"; it is the amount a retail merchant would charge for the vehicle. Here, the debtors have submitted no evidence as to this amount; the Bank, on the other hand, has submitted evidence from a source generally considered to be reliable.

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 \$6,500, which is less than the full amount of the Bank's claim. The court will hear the matter.

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1 The debtors do not own their own business, and on the Retail Installment Sale Contract, they 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.

28. 19-22502-D-13 JEFFERY/JEANETTE GATLIN  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
6-10-19 [29]

29. 19-22502-D-13 JEFFERY/JEANETTE GATLIN OBJECTION TO CONFIRMATION OF  
AP-1 PLAN BY DEUTSCHE BANK TRUST  
COMPANY AMERICAS  
6-12-19 [32]
30. 19-22311-D-13 AURORA CAYABYAB OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
6-10-19 [14]
31. 19-22519-D-13 CURTIS/BIANCA PERNICE OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
6-10-19 [23]
32. 19-22519-D-13 CURTIS/BIANCA PERNICE MOTION TO SELL  
JCK-1 6-7-19 [19]

33. 19-22625-D-13 ALICIA YASSIN  
RDG-2  
OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
6-17-19 [22]
34. 18-27726-D-13 EDWARD COLOMA AND  
JBR-2 KATHERINE SANCHEZ  
CONTINUED MOTION TO SELL  
6-2-19 [62]
35. 19-22134-D-13 MAGDALENA ALVARADO  
RDG-1  
CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
5-24-19 [29]
36. 19-21036-D-13 JULIE/GREGORY RENWICK  
RDG-1  
CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
4-22-19 [23]

37. 19-20441-D-13 CAROLYN VALDEZ  
MKM-2

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

38. 19-22750-D-13 DEBRA ROY  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
6-17-19 [32]

39. 19-22551-D-13 RICARDO QUESADA  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
6-10-19 [22]

40. 16-21360-D-13 PARAM SAINI AND SATNAM  
CLH-3 KAUR

MOTION TO AVOID LIEN OF PAULINE  
H. MCDONALD  
6-18-19 [46]

**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 because it 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 this reason, the motion will be denied by minute order. No appearance is necessary.

41.	19-22368-D-13	WALTER/SHIRLEY SAUNDERS	OBJECTION TO CONFIRMATION OF
	RDG-1		PLAN BY RUSSELL D. GREER
			6-10-19 [20]

42.	19-22368-D-13	WALTER/SHIRLEY SAUNDERS	OBJECTION TO CONFIRMATION OF
	AP-1		PLAN BY U.S. BANK, N.A.
			6-10-19 [17]

43.	19-21573-D-13	SHANNON FOLEY	CONTINUED OBJECTION TO
	RDG-2		CONFIRMATION OF PLAN BY RUSSELL
			D GREER
			5-13-19 [25]

44. 19-22676-D-13 MARIA EDWARDS-RAMOS  
RDG-1  
OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
6-17-19 [13]
45. 17-21381-D-13 SANDRA SANDERS  
PGM-3  
CONTINUED MOTION TO MODIFY PLAN  
5-2-19 [86]
46. 19-22298-D-13 DORIAN/CATHERINE ANNE  
RDG-2 COLBERT  
OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
6-10-19 [21]
47. 19-22299-D-13 RICHARD/STACIE FRANK  
RDG-1  
OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
6-10-19 [22]

48. 19-22399-D-13 JULIUS CARVER  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
6-10-19 [23]