

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

July 17, 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.	15-90702-D-13 TOG-2	VIRGINIA ZEPEDA	MOTION TO MODIFY PLAN 5-30-18 [62]
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2.	18-90106-D-13 JAD-2	ROBERT/JULIET ALVAGI	MOTION TO CONFIRM PLAN 5-18-18 [41]
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Tentative ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the plan proposes to pay the secured claim of the Franchise Tax Board, filed at \$57,858, only \$7,000 based on the alleged value of its collateral, whereas the debtor has failed to file a motion to value that collateral, as required by LBR 3015-1(i).

This is the debtor's second motion that has been denied for this reason and the court can conceive of no basis for the present motion that is anything short of disingenuous. The debtor's earlier motion, filed December 24, 2017, stated that "the Franchise Tax Board filed a proof of claim erroneously asserting a secured claim for \$57,858.90 based on a lien on 'real property.' The Debtor's only real property, his residence, was purchased shortly before the petition date with no money down using a Veteran's Administration loan program. At the most, the Debtor's equity in the residence is \$7,000.00. . . . The Plan now before the Court values the Franchise Tax Board's secured claim at \$7,000.00, curing the earlier defect." Motion, DN 58, at 2:1-5 and 11-12.

The current motion contains precisely the same language (Motion, DN 82, at 2:2-9) and the plan that is the subject of this motion is exactly the same, as regards the treatment of the Franchise Tax Board's secured claim, as the plan that was the subject of the earlier motion. Yet the debtor has still failed to file a motion to value the collateral, which was, as stated in the court's final ruling, precisely the basis on which the earlier motion was denied.¹ Thus, the earlier defect has not been cured and the statement in the motion that it has been cured is a misrepresentation.

Because the debtor has, again, failed to comply with LBR 3015-1(i), the motion will be denied. The court invites the debtor's counsel to explain at the hearing why he has taken no steps to cure the defect, which he has twice claimed to have cured. The failure to address this issue, together with the long delays between the denial of confirmation of one plan and the filing of the next one, has allowed the debtor to string out this case for 14 months with no plan confirmed. The court will hear the matter.

1 The Franchise Tax Board filed an amended claim on June 19, 2018, listing a secured portion of \$57,858.90, the same as in its original claim, and increasing slightly the amount of its priority and general unsecured claims. At no time has the Board filed a claim for only \$7,000 secured or for any amount less than \$57,858.90.

4. 17-90409-D-13 JOHNATHAN MOHR MOTION FOR RELIEF FROM
JDM-1 AUTOMATIC STAY AND/OR MOTION
TRAVIS CREDIT UNION VS. FOR RELIEF FROM CO-DEBTOR STAY
6-11-18 [91]
5. 18-90309-D-13 RONNIE KEOMUANGCHANH AND OBJECTION TO CONFIRMATION OF
RDG-1 OURAY SANACHAY PLAN BY RUSSELL D. GREER
6-18-18 [14]
6. 18-90210-D-13 RANDALL/CYNTHIA BAHAM OBJECTION TO DEBTORS' CLAIM OF
RDG-2 EXEMPTIONS
5-29-18 [21]

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 issue a minute order sustaining the trustee's objection to debtors' claim of exemptions. No appearance is necessary.

7. 17-90812-D-13 PAMELA LOOPER CONTINUED MOTION TO CONFIRM
PGM-2 PLAN
4-2-18 [60]

8. 18-90216-D-13 DEBBIE SWISEGOOD
RDG-1

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
5-29-18 [16]

Tentative ruling:

This is the trustee's objection to the debtor's claim of a homestead exemption under Cal. Code Civ. Proc. § 704.730(a)(3). The debtor has filed opposition. For the following reasons, the court intends to overrule the objection. The statute permits a \$175,000 homestead exemption to a person who is (1) 65 years old or older; (2) physically or mentally disabled who, as a result of that disability, is unable to engage in substantial gainful employment; or (3) 55 years old or older who has a gross annual income of not more than \$25,000.

The trustee has objected on the basis that the debtor is 64 years old and has gross annual income of \$27,192. In opposition, the debtor has filed amended Schedules I and J and a declaration. The court gives virtually no weight to the amended schedules, as they apply an unsupported interpretation of the term "income" and the debtor has been forced to reduce her household expenses, as listed on her amended Schedule J, to unrealistically low levels in order to compensate for the artificially reduced income listed on her amended Schedule I. In other words, the amended schedules do not reflect reality. The court also rejects the argument that social security income should not be included in the calculation. She claims "[t]he intent of Congress is to exclude Social Security benefits from consideration of income," but she provides no authority for the proposition that Congress' intent governs California's exemption statutes.

The debtor's better argument is that she is disabled. The debtor has testified she has salivary gland cancer, high blood pressure, and diabetes. Without any contrary evidence, the court concludes the debtor's current medical condition prevents her from engaging in substantial gainful employment, within the meaning of the statute. The debtor does receive income from the state as a caregiver for a family member. However, the court concludes this is quite different from being able to engage in substantial gainful employment. The amount of income she receives is marginal and does not support a conclusion that she is able to engage in substantial gainful employment. Accordingly, absent any further argument or evidence from the trustee, the court finds the debtor qualifies for the disability prong of the statute, and the objection will be overruled.

The court will hear the matter.

9. 18-90023-D-13 JOSEPH SHAW AND MARY
RLF-4 INDERBITZIN-SHAW

MOTION TO CONFIRM PLAN
5-24-18 [61]

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.

10. 18-90127-D-13 RAMON GONZALES AND SILVIA MOTION TO CONFIRM PLAN
TOG-2 ESQUIVEL 6-6-18 [35]

11. 17-90731-D-13 CHARLOTTE LOCKARD MOTION TO CONFIRM PLAN
MCC-12 5-24-18 [79]

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 use the current form of the chapter 13 plan, required in this district as of December 1, 2017 by General Order 17-03. The motion will be denied and the court need not reach the other issue raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

12. 17-91036-D-13 DEBORAH KIRKLE MOTION TO CONFIRM PLAN
DCJ-1 5-31-18 [33]

13. 18-90237-D-13 JOANN MERENDA OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
5-24-18 [21]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The objection was brought on the ground the debtor had failed to file a spousal waiver to permit her to claim the exemptions provided by Cal. Code Civ. Proc. § 703.140(b). On May 31, 2018, the debtor filed a spousal waiver that appears to be signed by the debtor and her spouse. As a result of the filing of the spousal waiver, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

14. 17-90746-D-13 SHARON MALONE
MC-1

MOTION TO MODIFY PLAN
6-9-18 [25]

Final ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied because the moving party failed to serve Springleaf Financial Services and Victoria's Secret/Comenity, listed on her Schedule E/F, as required by Fed. R. Bankr. P. 2002(a)(9). (The debtor filed her schedules two weeks after the petition was filed, and when she did so, she failed to update her master address list. Thus, when she used the PACER matrix for service of this motion, those two creditors were not included.)

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

15. 18-90264-D-13 MICHAEL FOELDI AND
GSJ-1 VANESSA QUEZADA

MOTION TO VALUE COLLATERAL OF
CFAM FINANCIAL SERVICES
6-5-18 [13]

Final ruling:

This is the debtors' motion to value collateral of CFAM Financial Services ("CFAM"), a 2013 Chevrolet Silverado. The motion will be denied because (1) the notice of hearing does not contain the caution required by LBR 9014-1(d)(3)(B)(ii) or the information required by LBR 9014-1(d)(3)(B)(iii); and (2) the moving parties failed to serve CFAM in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served CFAM (1) at two different post office box addresses, but with no attention line; and (2) purportedly through Registered Agent Solutions, Inc., its agent for service of process. The first method was insufficient because service on a corporation, partnership, or other unincorporated association must be to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there was no attention line. The second method was insufficient because the post office box address used is the mailing address of CFAM itself, as shown on its Statement of Information filed with the California Secretary of State, not the address of its agent for service of process, Registered Agent Solutions, Inc.

In addition, the debtors have failed to overcome the prima facie validity of CFAM's filed proof of claim,¹ and thus, have failed to demonstrate they are entitled to the relief requested, as required by LBR 9014-1(d)(3)(D). The motion states that the debtors believe the "reasonable, fair value" of the vehicle is \$14,000, a value they arrived at based on their own opinion and by researching the Kelley Blue Book private party value. The debtors state in their declaration that the KBB values the asset at about \$14,525, but that figure does not take into account that the bumper and tailgate need to be replaced. The KBB printout filed as an exhibit, which provides the starting point for the debtors' valuation, \$14,525, is for the private party value. There is no mention in the motion or declaration of the vehicle's "replacement value," which is the standard by which the court is to assess its value. Bankruptcy Code § 506(a)(2).² Thus, the debtors have failed to demonstrate that the replacement value is \$14,000 or any other value less than the secured portion of the claim, as asserted by CFAM.

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

- 1 CFAM has filed a proof of claim for \$31,675, of which the entire amount is claimed as secured.
- 2 Courts within the Ninth Circuit favor the retail value over the private party value as the appropriate starting point for determining replacement value. 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).

16.	18-90264-D-13	MICHAEL FOELDI AND	OBJECTION TO CONFIRMATION OF
	RDG-1	VANESSA QUEZADA	PLAN BY RUSSELL D. GREER
			6-11-18 [18]

17.	17-90869-D-13	KAY PARKER	MOTION TO CONFIRM PLAN
	WW-3		6-5-18 [96]

18.	18-90278-D-13	TIBURCIO/OLIVIA MENDOZA	OBJECTION TO CONFIRMATION OF
	RDG-1		PLAN BY RUSSELL D. GREER
			6-11-18 [15]

19. 18-90278-D-13 TIBURCIO/OLIVIA MENDOZA OBJECTION TO DEBTORS' CLAIM OF
RDG-2 EXEMPTIONS
6-11-18 [18]

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 issue a minute order sustaining the trustee's objection to debtors' claim of exemptions. No appearance is necessary.

20. 18-90083-D-13 MERCEDES HOLLOWAY MOTION TO CONFIRM PLAN
DCJ-3 5-31-18 [60]

21. 18-90191-D-13 ROBERT GUZELL MOTION TO VALUE COLLATERAL OF
SSA-1 BEST BUY
6-12-18 [25]

Tentative ruling:

This is the debtor's motion to value collateral of Best Buy - a washer, dryer, and kitchen appliances - at a total of \$3,667.50. The debtor testifies to what he believes to be the replacement value of each item. However, he also testifies all of the items were purchased on August 27, 2017, which was within one year prior to the filing of this case, on March 22, 2018. The debtor's amended Schedule D states the debt to Best Buy is secured by a purchase money security interest. The moving papers do not address the limitation created by the hanging paragraph following § 1325(a)(9) of the Code. Thus, it appears the debtor has not demonstrated he is entitled to the relief requested, as required by LBR 9014-1(d)(3)(D), and the motion will be denied.

The court will hear the matter.

22. 17-90195-D-13 DAVID/STACIE GONZALES MOTION TO MODIFY PLAN
MSN-3 6-12-18 [46]

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.

23. 18-90295-D-13 THOMAS GILLIS
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-11-18 [35]

24. 17-90400-D-13 JAMELIA ROBINSON
17-9005
ROBINSON V. PACIFIC MOTORS

CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH PACIFIC MOTORS
6-5-18 [50]

25. 18-90216-D-13 DEBBIE SWISEGOOD
RDG-2

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
5-29-18 [13]

26. 18-90220-D-13 LAQUITA CADWELL
RDG-2

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
5-23-18 [21]

27. 18-90337-D-13 MICHAEL/JOSEFINA GORMAN
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-5-18 [18]