

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

August 16, 2016 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.

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|----|--------------------------------|-------------|--------------------------------|
| 1. | 16-90304 -D-13 | JOHN DEMING | MOTION TO CONFIRM PLAN |
| | DCJ-3 | | 6-17-16 [40] |

Final 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 two secured claims of Mercedes-Benz Financial Services at less than the full amounts of the claims based on the alleged values of the creditor's collateral, whereas the debtor has failed to file motions to value that collateral, as required by LBR 3015-1(j).

For this reason, the motion will be denied and the court need not reach the other issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

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2. [16-90304](#)-D-13 JOHN DEMING
JHW-1
DAIMLER TRUST VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-29-16 [[51](#)]

Final ruling:

This matter is resolved without oral argument. This is Daimler Trust's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments on the auto lease and the vehicle is in the creditor's possession. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset and in the creditor's possession, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

3. [16-90304](#)-D-13 JOHN DEMING
JHW-2

OBJECTION TO CONFIRMATION OF
PLAN BY MERCEDES-BENZ FINANCIAL
SERVICES USA, LLC
6-29-16 [[58](#)]

Final ruling:

This is an objection by Mercedes-Benz Financial Services USA LLC to confirmation of the debtor's first amended chapter 13 plan. Because the debtor's motion to confirm the same plan, also on this calendar, will be denied by minute order, the objection is moot. Counsel for Mercedes-Benz should note for future reference that the objection was filed in a format that does not comply with the court's local rules. Under the rules, an objection to confirmation of a plan, accompanied by a notice of hearing, with all documents bearing their own docket control number, is the appropriate manner for objecting to confirmation of a debtor's initial plan filed in a case (assuming the plan was timely filed), whereas the appropriate manner for opposing a debtor's motion to confirm a plan, as was Mercedes-Benz' intention here, is by opposition bearing the same docket control number as the debtor's motion, and without its own notice of hearing. Compare LBR 3015-1(c)(4) with LBR 3015-1(d)(1) and 9014-1(f). The objection will be overruled as moot by minute order. No appearance is necessary.

4. [16-90304](#)-D-13 JOHN DEMING
JHW-3

OBJECTION TO CONFIRMATION OF
PLAN BY MERCEDES-BENZ FINANCIAL
SERVICES USA, LLC

August 16, 2016 at 10:00 a.m.

Final ruling:

This is an objection by Mercedes-Benz Financial Services USA LLC to confirmation of the debtor's first amended chapter 13 plan. Because the debtor's motion to confirm the same plan, also on this calendar, will be denied by minute order, the objection is moot. Counsel for Mercedes-Benz should note for future reference that the objection was filed in a format that does not comply with the court's local rules. Under the rules, an objection to confirmation of a plan, accompanied by a notice of hearing, with all documents bearing their own docket control number, is the appropriate manner for objecting to confirmation of a debtor's initial plan filed in a case (assuming the plan was timely filed), whereas the appropriate manner for opposing a debtor's motion to confirm a plan, as was Mercedes-Benz' intention here, is by opposition bearing the same docket control number as the debtor's motion, and without its own notice of hearing. Compare LBR 3015-1(c)(4) with LBR 3015-1(d)(1) and 9014-1(f). The objection will be overruled as moot by minute order. No appearance is necessary.

5. [16-90512](#)-D-13 MITCHEL/DAWN FRIDAY MOTION TO VALUE COLLATERAL OF
ALF-1 CITIFINANCIAL
7-11-16 [[15](#)]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Citifinancial at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. 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 set the amount of Citifinancial's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

6. [11-90514](#)-D-13 HOWARD HANCOCK AND JOAN
CJY-2 ALSOP MOTION FOR EXEMPTION FROM
FINANCIAL MANAGEMENT COURSE, TO
EXCUSE DEBTOR HOWARD F. HANCOCK
FROM THE 11 U.S.C. SECTION 1328
CERTIFICATE AND THE CERTIFICATE
OF CHAPTER 13 DEBTOR RE: 11
U.S.C. SECTION 522(Q)
EXEMPTIONS
7-15-16 [86]

7. [16-90415](#)-D-13 KYLE WATKINS
MSN-1

MOTION TO VALUE COLLATERAL OF
HERITAGE COMMUNITY CU
6-22-16 [[16](#)]

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.

8. [11-94222](#)-D-13 SHELLEY SHAHEN
DCJ-6

MOTION TO MODIFY PLAN
7-5-16 [[107](#)]

9. [15-91228](#)-D-13 BRAD OLIVER
MSN-2

MOTION TO AVOID LIEN OF
CITIBANK, N.A.
6-17-16 [[30](#)]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

10. [14-90529](#)-D-13 GREGG/KIANDRA WALKER MOTION TO APPROVE LOAN
JAD-7 MODIFICATION
6-24-16 [[108](#)]
11. [14-90529](#)-D-13 GREGG/KIANDRA WALKER MOTION TO MODIFY PLAN
JAD-8 6-24-16 [[113](#)]
12. [15-90335](#)-D-13 SANDRA NARANJO MOTION TO MODIFY PLAN
PGM-2 6-21-16 [[91](#)]

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.

13. [16-90335](#)-D-13 WILLIAM LEMMONS MOTION TO CONFIRM PLAN
DCJ-1 6-20-16 [[32](#)]

14. [15-91037](#)-D-13 TODD/ROSIE JONES
PLG-7

MOTION TO CONFIRM PLAN
6-15-16 [[95](#)]

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.

15. [16-90438](#)-D-13 DANIEL MCCracken
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-18-16 [[32](#)]

16. [16-90441](#)-D-13 JAIME/EVELIA MARTINEZ
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-18-16 [[25](#)]

17. [16-90342](#)-D-13 NIKOLAY/LILIA
CJY-1 GERASIMCHUK

MOTION TO CONFIRM PLAN
6-14-16 [[17](#)]

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

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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. [16-90349](#)-D-13 WARREN/LYNETTE MCGHEE MOTION TO CONFIRM PLAN
JAD-1 6-17-16 [[13](#)]

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.

19. [16-90451](#)-D-13 DOLORES LOZA OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
7-18-16 [[18](#)]

20. [16-90252](#)-D-13 STEPHEN/TAMMIE HARKRADER MOTION TO CONFIRM PLAN
DCJ-1 6-17-16 [[20](#)]

21. [16-90552](#)-D-13 MIGUEL/NORBERTA DIAZ MOTION TO AVOID LIEN OF
CJY-1 PORTFOLIO RECOVERY ASSOCIATES,
LLC

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6-27-16 [[8](#)]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

22. [16-90053](#)-D-13 CHRIS CRUM
WS-2

MOTION TO CONFIRM PLAN
6-20-16 [[44](#)]

Final ruling:

This case was dismissed on June 21, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

23. [16-90459](#)-D-13 RICARDO/GABRIELA SALVADOR
PPR-1

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK TRUST
COMPANY AMERICAS
7-6-16 [[13](#)]

24. [16-90160](#)-D-13 ISAAC GUZMAN
MSN-1

MOTION TO CONFIRM PLAN
6-17-16 [[34](#)]

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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25. [16-90466](#)-D-13 JOANN MORGAN
OBJECTION TO CONFIRMATION OF
PLAN BY BAYVIEW LOAN SERVICING,
LLC
7-20-16 [[31](#)]

Final ruling:

This case was dismissed on August 8, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

26. [16-90466](#)-D-13 JOANN MORGAN
RDG-2
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-18-16 [[27](#)]

Final ruling:

This case was dismissed on August 8, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

27. [14-91069](#)-D-13 CHRISTOPHER/ANGELA
RDG-4 MAYFIELD
CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
6-2-16 [[51](#)]

28. [14-91471](#)-D-13 MORIS/KATRINE KOOCHOF
BSH-6
CONTINUED MOTION TO INCUR DEBT
6-29-16 [[81](#)]

29. [16-90075](#)-D-13 DANIEL JAMES AND PAULA
EAT-2 FOX-JAMES
CONTINUED MOTION TO VALUE
COLLATERAL OF WELLS FARGO BANK,
N.A.
6-16-16 [[50](#)]

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Final ruling:

This matter has been resolved by stipulation of the parties, filed July 19, 2016 and approved by the court by order filed July 20, 2016. The matter is removed from calendar.

30. [13-91482](#)-D-13 CHRISTOPHER KAPPMAYER OBJECTION TO NOTICE OF MORTGAGE
PGM-3 PAYMENT CHANGE
6-29-16 [[87](#)]

Final ruling:

This matter has been continued by stipulation and order September 27, 2016, at 10:00 a.m. No appearance is necessary on August 16, 2016.

31. [16-90584](#)-D-13 MANUEL OLIVARES AND MOTION TO VALUE COLLATERAL OF
TOG-1 AGRIPINA YEPEZ WELLS FARGO BANK, N.A.
7-19-16 [[10](#)]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Wells Fargo Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. 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 set the amount of Wells Fargo Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

32. [16-90189](#)-D-13 RENDELL AGBAYANI MOTION TO CONFIRM PLAN
TOG-2 6-24-16 [[36](#)]

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 parties listed on the debtor's Schedule H. 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 parties who are co-debtors with the debtor.

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

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33. [12-91592](#)-D-13 SCOTT/MARIA TILLERY MOTION TO MODIFY PLAN
CJY-8 6-30-16 [[96](#)]

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.

34. [15-91195](#)-D-13 SOMCHAY/SANDY VONGSENA MOTION TO CONFIRM PLAN
TOG-4 7-5-16 [[53](#)]

Final ruling:

This is the debtors' motion to confirm a second amended chapter 13 plan. On August 2, 2016, the debtors 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 debtors' purported withdrawal of the motion was ineffective. Because opposition had been filed, the debtors did not have the right to unilaterally withdraw the motion. Fed. R. Civ. P. 41(a), incorporated herein by Fed. R. Bankr. P. 7041.) The motion will be denied as moot by minute order.

35. [15-91197](#)-D-13 CATHERINE CORINA MOTION TO CONFIRM PLAN
PGM-4 6-16-16 [[122](#)]

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.

36. [14-91398](#)-D-13 LOUIS JORDAN MOTION TO MODIFY PLAN
CJY-1 6-21-16 [[28](#)]

37. [11-92000](#)-D-13 DOUGLAS/THERESA WINFREY MOTION TO EXCUSE DEBTOR THERESA
CJY-4 LYNN WINFREY FROM COMPLETING
THE 1328 AND 522 CERTIFICATES
7-27-16 [[83](#)]
38. [11-94006](#)-D-13 WILLIAM BURDEN MOTION TO VALUE COLLATERAL OF
CJY-3 WELLS FARGO BANK
7-27-16 [[34](#)]
39. [11-94006](#)-D-13 WILLIAM BURDEN MOTION TO VALUE COLLATERAL OF
CJY-4 WELLS FARGO BANK
7-27-16 [[38](#)]
40. [10-93120](#)-D-13 RAMESHWAR/MICHELLE MOTION TO AVOID LIEN OF
TPH-4 PRASAD NATIONAL CREDIT ACCEPTANCE,

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INC.
8-1-16 [[64](#)]

41. [16-90520](#)-D-13 ARTIE RAZO MOTION TO VALUE COLLATERAL OF
DCJ-1 CHRYSLER CREDIT
7-28-16 [[18](#)]
42. [16-90648](#)-D-13 MOHAMMAD BHUIYAN AND MOTION TO EXTEND AUTOMATIC STAY
DCJ-1 MOSAMMAT AKTER
8-2-16 [[9](#)]
43. [11-92062](#)-D-13 ESHVIN/OSANA AVAK MOTION TO VALUE COLLATERAL OF
CJY-1 WELLS FARGO BANK
7-27-16 [[34](#)]
44. [11-91678](#)-D-13 MELVIN/DENISE DAILEY MOTION TO VALUE COLLATERAL OF

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CJY-3

WELLS FARGO BANK
7-27-16 [[92](#)]

45. [11-91686](#)-D-13 DAVID/ROSIO MELENDEZ MOTION TO VALUE COLLATERAL OF
CJY-1 INTERBANK
7-29-16 [[81](#)]

46. [14-91069](#)-D-13 CHRISTOPHER/ANGELA CONTINUED RE: MOTION TO EXTEND
RLF-3 MAYFIELD TIME
8-8-16 [[61](#)]