

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: January 11, 2022

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

The court will issue an order.

3. [21-90522](#)-B-13 KEVIN JORDAN
[RDG-1](#) Shane Reich

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-22-21 [[22](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtor appeared at the continued meeting of creditors held January 5, 2022, and it was concluded as to the Debtor.

Second, the plan has not been proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtor has included an inappropriate housing expense on Schedule J and several expenses appear disproportionate for a household of two, such as \$500 for home maintenance, \$1,800 for food, and \$400 for entertainment. Without these expenses, Debtors would have an increased disposable income that would yield an additional distribution to general unsecured creditors.

Third, the Debtor's net income is insufficient to pay the proposed plan payment of \$7,782.34 per month, which itself is less than the \$8,893.94 required to pay monthly payments to secured creditors plus the Chapter 13 Trustee's fees and expenses. The plan is not feasible under 11 U.S.C. § 1325(a)(6).

Fourth, the Debtor has not provided the Trustee with copies of his business' current profit and loss statements and has not filed an attachment to Schedule I showing his business' income and expenses. Without these documents, it cannot be determined whether the plan is feasible and pays all projected disposable income to general unsecured creditors. 11 U.S.C. § 1325(a)(6) and (b)(1).

Fifth, feasibility depends on the filing and granting of a motion to value collateral securing the Internal Revenue Service's claim.

The plan filed November 16, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

4. [21-90535](#)-B-13 EDUARDO BARAJAS AND ERIKA OBJECTION TO CONFIRMATION OF
[RDG-1](#) HERRERA PLAN BY RUSSELL D. GREER
T. Mark O'Toole 12-20-21 [[23](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, Debtors testified at the § 341 meeting of creditors that they receive rental income of \$1,600.00 per month, not \$1,050.00 per month as indicated on Schedule I at line 8a. The Debtors have failed to submit an amended Schedule I and it cannot be determined whether the plan is feasible. 11 U.S.C. §1325(a)(6).

Second, the plan is not Debtors' best efforts pursuant to 11 U.S.C. §1325(b). Debtors' plan payment is \$1,795.00 per month, while Debtors' Schedule J shows that they have a net income of \$2,414.00 per month. Accordingly, Debtors are not contributing all of their net income into the plan.

The plan filed November 9, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

5. [19-90564](#)-B-13 BRENDA STREET MOTION TO SELL
[BSH-1](#) Brian S. Haddix 12-23-21 [[39](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to sell and continue the matter to January 18, 2022, at 1:00 p.m.**

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 941 Haycastle Court, Newman, California ("Property").

Proposed purchaser Mari Olomi has agreed to purchase the Property for \$450,000.00. The sale price is all cash, will pay in full all liens against the property, and will pay unsecured creditors a 100% dividend. The Debtor's plan confirmed October 9, 2019, had provided unsecured creditors with a 0.47% dividend. Debtor has claimed \$100,000.00 of the proceeds from the sale as exempt pursuant to California Code of Civil Procedure § 704.730.

Debtor states that the Chapter 13 Trustee will approve the escrow and title company to be used in connection with the transaction. The Trustee will approve the estimated closing statement prepared in connection with the sale and, when approved, disbursement will only be made in accordance with the approved estimated closing statement. Debtor will deposit the proceeds of the sale into the Client Trust Account of Brian S. Haddix, Debtor's attorney-of-record. Debtor will use the funds to promptly pay 100% of all allowed claims including administrative expenses. Debtor will retain the surplus and seek early discharge.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate. The motion is conditionally granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, January 14, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on January 18, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on January 18, 2022, at 1:00 p.m.

6. [21-90472](#)-B-13 CARL GONSALVES
[AP-1](#) Pro Se
Thru #8
THE BANK OF NEW YORK MELLON
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-9-21 [[30](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court has reviewed the motion and its related documents. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1). The motion is appropriate for disposition without oral argument, which will not assist in the decision-making process. See Local Bankr. R. 1001-1(f), 9014-1(h). Findings of fact and conclusions of law are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052, 9014(c).

The court's decision is to grant the motion for relief from stay.

Before the court is a *Motion for in Rem Relief From the Automatic Stay and Memorandum of Points and Authorities in Support Thereof* filed by The Bank of New York Mellon f/k/a The Bank of New York as Trustee for First Horizon Alternative Mortgage Securities Trust 2005-AA8 ("Secured Creditor"). The motion concerns real property located at 1032 Deena Way, Fallon, Nevada ("Property"). Secured Creditor holds a deed of trust on the Property.

The motion is not opposed. However, on January 3, 2022, Debtor Carl Gonsalves ("Debtor") filed an opposition to the Chapter 13 Trustee's pending motion to dismiss in which he requests a continuance of the January 11, 2022, hearing on Secured Creditor's motion. The Debtor states that he is in the process of attempting to find an attorney, at some point he submitted a loan modification to Secured Creditor (although there is no evidence of this in the record), and he lives part-time at the Property apparently to enjoy the winter sports that nearby Lake Tahoe offers.

The problem here is that the motion was filed on December 9, 2021, which means that the automatic stay will terminate 30 days after Secured Creditor's request unless the court treats the January 11, 2022, hearing as a preliminary hearing, orders the stay continued in effect pending the conclusion of a final hearing, and sets a final hearing. See 11 U.S.C. § 362(e)(1). However, in order to treat the January 11, 2022, hearing as a preliminary hearing and continue the automatic stay in effect pending a final hearing the court must find that "there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing." *Id.* On the record before it, the court is not able to make that finding.

Secured Creditor has submitted uncontested evidence that the value of the Property is \$323,800.00 and that after accounting for its deed of trust and costs of sale there is negative equity of \$100,732.78. The Debtor also admits that he resides at the Property "part-time" and apparently does so to partake of "winter sports at Lake Tahoe; [] skiing, snow-boarding, and all sorts of recreational activities." Dkt. 47.

Secured Creditor has also submitted uncontested evidence that the Debtor is not the original borrower, that the Debtor acquired an interest in the Property as a "gift" pursuant to an unauthorized grant deed, that there have been four bankruptcy cases filed by three different parties in the past two years affecting the Property, *i.e.*,

the Debtor twice, the original borrower, and another by the name of Diana Evans.¹

Based on the record before it the court concludes: (1) there is no reasonable likelihood that the Debtor will prevail on Secured Creditor's motion if the court were to treat the January 11, 2022, hearing as a preliminary hearing and set a final hearing; (2) there is no equity in the Property; (3) to the extent the Debtor occupies the Property part-time for recreational purposes, the Property is not necessary for the Debtor's effective reorganization; and (4) Secured Creditor's claim is secured by the Property and the petition in this case was filed as part of a scheme to delay, hinder, or defraud Secured Creditor through a transfer of an interest in the Property without Secured Creditor's consent or court approval and by multiple bankruptcy filings affecting the Property.

With regard to the latter, the unauthorized conveyance of an interest in the Property to the Debtor for no consideration and the claim of an interest in the Property by unrelated debtor, who is a bad faith and abusive serial-filer of non-productive bankruptcy cases, are indicative of efforts to use multiple bankruptcy filings to thwart Secured Creditor's legitimate efforts to enforce of its note and deed of trust through foreclosure. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (9th Cir. BAP 2012) ("[Section 362(d)(4)] permits the bankruptcy court to grant in rem relief from the automatic stay in order to address schemes using bankruptcy to thwart legitimate foreclosure efforts through one or more transfers of interest in real property.").

The Debtor's requested for a continuance will be ORDERED DENIED under 11 U.S.C. § 362(e).

Secured Creditor's motion will be GRANTED and the automatic stay of 11 U.S.C. § 362(a) will be ORDERED TERMINATED under 11 U.S.C. §§ 362(d)(1) and (d)(2) with additional relief ORDERED GRANTED under 11 U.S.C. § 362(d)(4).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is ORDERED WAIVED.

The court will issue an order.

¹Diana Evans is a serial filer of bad faith non-productive bankruptcy cases in the Eastern District of California. In addition to the case affecting the Property identified by Secured Creditor, no. 19-24939, Ms. Evans has also filed the following bankruptcy cases: no. 21-23775, filed on November 1, 2021, and which remains open; no. 21-20525 filed on February 16, 2021, and dismissed on March 1, 2021, for failure to timely file documents; no. 20-22996 filed on June 12, 2020, and dismissed on July 13, 2020, for failure to timely file documents; no. 17-26013 filed on September 9, 2017, and dismissed on June 7, 2018, with a one-year bar to refiling; no. 15-27853 filed on October 7, 2015, and dismissed on January 22, 2016, for failure to appear at the § 341(a) creditors' meeting and failure to submit payment advices and tax returns; and no. 15-21530 filed on February 23, 2015, and dismissed on July 8, 2015, for failure to appear at the § 341(a) creditors' meeting and failure to submit payment advices and tax returns.

7. [21-90472](#)-B-13 CARL GONSALVES CONTINUED OBJECTION TO
[RDG-1](#) Pro Se CONFIRMATION OF PLAN BY RUSSELL
D GREER
11-18-21 [[22](#)]

CONTINUED TO 1/25/22 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SCHEDULED FOR 1/19/22.

Final Ruling

No appearance at the January 11, 2021, hearing is required. The court will issue an order.

8. [21-90472](#)-B-13 CARL GONSALVES CONTINUED MOTION TO DISMISS
[RDG-2](#) Pro Se CASE
12-7-21 [[26](#)]

CONTINUED TO 1/25/22 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SCHEDULED FOR 1/19/22 AND IN CONJUNCTION WITH THE CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D GREER, RDG-1.

Final Ruling

No appearance at the January 11, 2021, hearing is required. The court will issue an order.

9. [20-90482](#)-B-13 RODNEY/KIMBERLY MIRANDA MOTION TO MODIFY PLAN
[MSN-1](#) Mark S. Nelson 11-9-21 [[31](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

10. [21-90082](#)-B-13 TRACY BELL MOTION TO MODIFY PLAN
[MJD](#)-3 Matthew J. DeCaminada 11-10-21 [[40](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

11. [21-90066](#)-B-13 CHARLES/G BURLEIGH
[RDG-1](#) Brian S. Haddix

CONTINUED OBJECTION TO CLAIM OF
ALAMEDA COUNTY DCSS, CLAIM
NUMBER 36
11-22-21 [[38](#)]

Final Ruling

This matter was continued from January 4, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, January 7, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 41, sustaining the objection to claim, shall become the court's final decision. The continued hearing on January 11, 2022, at 1:00 p.m. is vacated.

The motion is ORDERED SUSTAINED for reasons stated in the minutes at dkt. 41.

The court will issue an order.

12. [21-90183](#)-B-13 SECO BROWN AND LINDA CONTINUED OBJECTION TO CLAIM OF
[RDG-1](#) WILLIAMS-BROWN FRANCHISE TAX BOARD, CLAIM
Flor De Maria A. Tataje NUMBER 5
11-22-21 [[45](#)]

Final Ruling

This matter was continued from January 4, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, January 7, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 41, sustaining the objection to claim, shall become the court's final decision. The continued hearing on January 11, 2022, at 1:00 p.m. is vacated.

The motion is ORDERED SUSTAINED for reasons stated in the minutes at dkt. 41.

The court will issue an order.