

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

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: June 16, 2020

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.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 16, 2020 at 1:00 p.m.

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1. [20-22701](#)-B-13 EVAN PASTERNAK AND SONJA MOTION TO VALUE COLLATERAL OF
[CYB-1](#) DURAN COMMONWEALTH CENTRAL CREDIT
Candace Y. Brooks UNION
5-29-20 [[8](#)]

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). Opposition was filed by Commonwealth Central Credit Union. The court will address the merits of the motion at the hearing.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to deny without prejudice the motion to value.

Debtors' motion to value the secured claim of Commonwealth Central Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of 2017 Jeep Renegade ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$14,825.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 2-1 filed by Commonwealth Central Credit Union is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on December 7, 2017, which is less than 910 days prior to filing of the petition on May 26, 2020. The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value. Accordingly, the Debtors' motion is denied without prejudice.

June 16, 2020 at 1:00 p.m.
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The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

2. [19-21705](#)-B-13 TOBY TOLEN
[JGD-12](#) John G. Downing

MOTION FOR COMPENSATION FOR
JOHN DOWNING, ACCOUNTANT(S)
5-26-20 [[171](#)]

Final Ruling

Introduction

The court has before it an Application for Compensation filed by the attorney for Debtor Toby Tolin ("Debtor"). Debtor's attorney requests approval of \$9,000.00 in attorney's fees and, since \$2,000.00 were paid prepetition, that the outstanding balance of the fees in the amount of \$7,000.00 be paid as an administrative expense through the Debtor's third amended plan. This matter relates to the original motion for compensation (JGD-10) and the motion for reconsideration (JGD-11). The record developed in both matters is incorporated herein by this reference.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to conditionally approve the application and allow the attorney's fees requested, and continue the hearing on the application to June 30, 2020, at 1:00 p.m.

Discussion

When comparing the billing/invoices at dkts. 157 and 174, Debtor's attorney provided an additional 9.2 hours of work after March 31, 2020. This should mean that the hours rendered were $41.1 + 9.2 = 50.3$. However, somehow Debtor's attorney asserts that 59.2 hours of service were provided. It appears that counsel tacked on more hours to services provided pre-March 31, 2020. In any case, counsel is only being approved for \$9,000.00 in attorney's fees regardless of how much "additional" time was spent.

Having reviewed the application and its related declarations and exhibits, and time and task entries now having been "unlumped," the court concludes that \$9,000.00 for services provided is reasonable. See *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); see also *In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted). The court also concludes that the hourly rate of \$300.00 is consistent with Debtor's attorney's experience, skill, and hourly rates routinely charged by similarly-experienced consumer attorneys in the Eastern District of California. See *Hall v. FCA US LLC*, 2018 WL 2298431, *7 (E.D. Cal. 2018); *Lyon v. Bergstrom Law, Ltd.*, 2017 WL 3913375, *3 (E.D. Cal. 2017). The hourly rate is also consistent with the hourly rates of similarly experienced counsel who appear before the bankruptcy court. See *In re Hsin-Shawn Cindi Sheng*, 2019 WL 6033212, *4 (Bankr. E.D. Cal. 2019). The application will therefore be approved and attorney's fees in the amount of \$9,000.00, with \$7,000.00 to be paid through the third amended plan, allowed.

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 June 23, 2020, to file and serve an opposition or other response to the application. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Debtor's attorney, the Chapter 13 Trustee, and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served the application 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 June 30, 2020, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the application on June 30, 2020, at 1:00 p.m.

The court will issue an order.

3. [19-27111](#)-B-13 MICHAEL/SHANON BENNETT MOTION TO CONFIRM PLAN
[RK-4](#) Richard Kwun 4-22-20 [[74](#)]

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d) (1), 9014-1(f) (1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition was filed.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to confirm the second amended plan.

The Debtors have confirmed with the Chapter 13 Trustee that the correct spelling for their street address is "Maine."

The amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) 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.

4. [20-20614](#)-B-13 RICHARD/PATRICIA VENTURA MOTION TO CONFIRM PLAN
[CK-3](#) Catherine King 5-11-20 [[53](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Non-opposition was filed by the Chapter 13 Trustee. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) 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.

5. [20-20923](#)-B-13 SOPAWORN SAVEDRA CONTINUED MOTION TO VALUE
[GEL-1](#) Gabriel E. Liberman COLLATERAL OF CAN CAPITAL
Thru #7 MERCHANT SERVICES, INC.
5-6-20 [[34](#)]

Final Ruling

This matter was continued to allow creditor CAN Capital Merchant Services, Inc. to file any opposition. No opposition was filed. The motion is granted for reasons stated at dkt. 51.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

6. [20-20923](#)-B-13 SOPAWORN SAVEDRA CONTINUED MOTION TO VALUE
[GEL-2](#) Gabriel E. Liberman COLLATERAL OF DMKLA LLC
5-6-20 [[38](#)]

Final Ruling

This matter was continued to allow creditor DMKLA LLC to file any opposition. No opposition was filed. The motion is granted for reasons stated at dkt. 52.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

7. [20-20923](#)-B-13 SOPAWORN SAVEDRA CONTINUED MOTION TO VALUE
[GEL-3](#) Gabriel E. Liberman COLLATERAL OF RIVER VALLEY
COMMUNITY BANK
5-6-20 [[43](#)]

Final Ruling

This matter was continued to allow creditor River Valley Community Bank to file any opposition. No opposition was filed. The motion is granted for reasons stated at dkt. 54.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition was filed by the Chapter 13 Trustee and non-opposition was filed by creditor U.S. Bank National Association. The Debtor has filed a response.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure “until further notice” due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court’s decision is to not confirm the first amended plan.

The plan will take approximately 104 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

The other issues raised by the Chapter 13 Trustee appear to have been resolved. Specifically, the Debtor states that he is current on all plan payments and his mortgage and that, while feasibility of the plan depends on the refinance of a second deed of trust held by U.S. Bank National Association, the creditor has filed a response consenting to this treatment.

Nonetheless, due to the over-extension of the plan, amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition was filed.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to not confirm the first amended plan.

First, the plan payment in the amount of \$2,600.00 for months 25-60 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of these monthly amounts plus Trustee's fees is \$2,801.41. The plan does not comply with Section 5.02 of the mandatory form plan.

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a chapter 7 proceeding.

Third, the meeting of creditors was continued to May 28, 2020, to allow the Debtors to submit proof of their social security numbers. The continued meeting of creditors was held and concluded.

Nonetheless, for the first and second reasons stated above, the amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition was filed.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to not confirm the second amended plan.

First, the second amended plan suffers the same inadequacies that were upheld in the previously filed amended plan. See dkt. 39.

Second, the second amended plan still lists Specialized Loan Servicing in Class 4.

Third, the Debtor's supplemental declaration, dkt. 61, attempts to clarify ownership as to real property located at 3235 Dry Creek, 3237 Dry Creek, and 3239 Dry Creek. However, it is still not clear which of these properties is Debtor's current primary residence, a rental property, or was destroyed in the Camp fire. It is also unclear which property the mortgage expenses of \$800 and \$1,250, as listed in Schedule J, are being paid on.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

11. [19-26567](#)-B-13 WALTER FLETSCHER
[DBJ](#)-3 Douglas B. Jacobs

MOTION TO CONFIRM PLAN
4-30-20 [[82](#)]

Final Ruling

The Debtor having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

The motion is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

12. [20-21505](#)-B-13 STEPHEN COHRS
[DPC-1](#) Timothy J. Walsh

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
5-13-20 [[14](#)]

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 a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

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

Although the continued meeting of creditors held June 11, 2020, has been continued to July 9, 2020, at a minimum the plan is not confirmable because it calls for ongoing mortgage payments paid by the Trustee to Class 1 creditor PennyMac to be forborne for three months (April, May, and June). Even though the Debtor provided the Trustee with a letter from PennyMac approving this forbearance plan, it was not filed with the court and does not state how those post-petition payments will be cured.

Separately, the plan will take approximately 79 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). If the forbearance payments do not need to be paid by the Trustee and the cure of those post-petition payments occurs after the term of the plan, the Trustee believes the plan will complete within 60 months.

Nonetheless, due to the vagueness of the forbearance of mortgage payments, the plan filed March 13, 2020, 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.