

**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: October 6, 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

October 6, 2020 at 1:00 p.m.

1. [13-28605](#)-B-13 JUAN RIGGINS MOTION TO AVOID LIEN OF THE
[PGM-4](#) Peter G. Macaluso GOLDEN 1 CREDIT UNION
9-17-20 [[99](#)]

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, and may appear at the hearing to offer oral argument. However, in light of court closures due to the COVID-19 pandemic, 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 to the 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 conditionally grant the motion to avoid lien and continue the hearing to **October 13, 2020, at 1:00 p.m.**

This is a request for an order avoiding the judicial lien of The Golden 1 Credit Union ("Creditor") against the Debtor's property commonly known as 9644 Cutter Cove, Elk Grove, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$17,228.25. An abstract of judgment was recorded with Sacramento County on February 4, 2013, which encumbers the Property. All other liens recorded against the Property total \$591,067.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$410,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$500.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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, October 9, 2020, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee 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 October 13,

October 6, 2020 at 1:00 p.m.
Page 1 of 16

2020, 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 October 13, 2020, at 1:00 p.m.

The court will issue an order.

2. [19-24643](#)-B-13 STACY HALLINAN
[JCK-2](#) Gregory J. Smith

MOTION TO MODIFY PLAN
8-25-20 [[33](#)]

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.

3. [20-23544](#)-B-13 CIPRIANO SULAMO
[RDG-2](#) Pro Se

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
9-16-20 [[40](#)]

Final Ruling

This matter was continued from September 29, 2020, to allow any response to be filed by Friday, October 2, at 5:00 p.m. No response has been filed. The motion is granted for reasons stated in the civil minutes at docket 56. The continued hearing date of October 6, 2020, at 1:00 p.m. is vacated.

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

The court will issue an order.

4. [20-22949](#)-B-13 ROBERT/PENELOPE CASH
[JAD](#)-1 Jessica A. Dorn

MOTION TO VALUE COLLATERAL OF
AMERICAN HONDA FINANCE
CORPORATION
8-28-20 [[25](#)]

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). 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 deny without prejudice the motion to value.

Debtors' motion to value the secured claim of American Honda Finance Corporation ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2016 Honda Accord ("Vehicle"). The Debtor seeks to value the Vehicle at a private party value of \$13,184.00 as of the petition filing date based on a Kelley Blue Book valuation.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 3-1 filed by American Honda Finance Corporation is the claim which may be the subject of the present motion.

Discussion

The court finds issue with the Debtors' valuation. First, the declaration states that the valuation of the Vehicle is based on a Kelley Blue Book printout but this is a third-party industry source and, therefore, Debtors' opinion of value is based on hearsay. Fed R. Evid. 801-803; *see also In re Guerra*, 2008 WL 3200931, *2 n.4 (Bankr. E.D. Cal. 2008) ("Filed with Guerra's declaration was an unauthenticated document titled: 'Edmonds.com True Market Value Pricing Report.' The court has not considered this attachment in that it is inadmissible hearsay[.]"). Second, the motion states that the valuation is a "private party" value. This is the value in which a private party, who is not a retailer, could buy or sell a car. The standard here must be a retail valuation, taking into account the condition of the car. *See* 11 U.S.C. § 506(a).

In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2).

The Debtors have not persuaded the court regarding their position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

The court will issue an order.

5. [16-28163](#)-B-13 KAREN KHAN
[JCK](#)-6 Gregory J. Smith

MOTION TO MODIFY PLAN
8-27-20 [[103](#)]

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.

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 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). 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 to the 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 permit the requested modification and confirm the modified plan.

The Chapter 13 Trustee objects to confirmation on grounds that the Debtor is \$1,060.00 delinquent under the proposed plan and the proposed plan does not provide for the correct amount of \$1,370.16 in post-petition arrears owed to Ocwen Loan Servicing.

Debtor filed a response stating that she cured the delinquency on September 30, 2020, and that she can provide in the order modifying plan an increase in plan payments at a rate of \$200.00 per month to cover the post-petition arrears.

Based on the aforementioned, the modified 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 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.

7. [20-21970](#)-B-13 JEFFREY/MIGHELA COCHRAN MOTION TO CONFIRM PLAN
[PGM-2](#) Peter G. Macaluso 8-20-20 [[62](#)]

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). 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 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.

8. [17-25082](#)-B-13 MARIO/LUCIA ROCHA
[ADR-1](#) Justin K. Kunej

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA) N.A.
9-5-20 [[49](#)]

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). 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 grant the motion to avoid lien.

This is a request for an order avoiding the judicial lien of Capital One Bank (USA) N.A. ("Creditor") against the Debtors' property commonly known 4123 Memoir Avenue, Tracy, California ("Property").

A judgment was entered against Joint Debtor in favor of Creditor in the amount of \$4,410.07. An abstract of judgment was recorded with San Joaquin County on February 2, 2017, which encumbers the Property. All other liens recorded against the Property total \$316,081.33.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$410,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will issue an order.

9. [20-20387](#)-B-13 PABLO/TERESA CHAGOYA OBJECTION TO CONFIRMATION OF
[DWE-1](#) Charles L. Hastings PLAN BY FREEDOM MORTGAGE
Thru #10 CORPORATION
8-26-20 [[45](#)]

CONTINUED TO 10/13/2020 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTORS'
MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION.

Final Ruling

No appearance at the October, 6, 2020, hearing is required. The court will enter a
minute order.

10. [20-20387](#)-B-13 PABLO/TERESA CHAGOYA OBJECTION TO CONFIRMATION OF
[RDG-1](#) Charles L. Hastings PLAN BY RUSSELL D. GREER
9-14-20 [[49](#)]

CONTINUED TO 10/13/2020 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTORS'
MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION.

Final Ruling

No appearance at the October, 6, 2020, hearing is required. The court will enter a
minute order.

11. [12-39391](#)-B-13 JAMES/DEBORAH BISHOP
[MJH](#)-2 Mark J. Hannon

MOTION TO AVOID LIEN OF
CITIBANK (SOUTH DAKOTA) N.A.
9-15-20 [[55](#)]

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, and may appear at the hearing to offer oral argument. However, in light of court closures due to the COVID-19 pandemic, 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 to the 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 conditionally grant the motion to avoid lien and continue the hearing to **October 13, 2020, at 1:00 p.m.**

This is a request for an order avoiding the judicial lien of Citibank (South Dakota) N.A. ("Creditor") against the Debtors' property commonly known as 2509 Canyon Creek Drive, Stockton, California ("Property").

A judgment was entered against Joint Debtor in favor of Creditor in the amount of \$10,849.77. An abstract of judgment was recorded with San Joaquin County on June 1, 2011, which encumbers the Property. All other liens recorded against the Property total \$431,684.12.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$225,352.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$10,849.77 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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, October 9, 2020, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee 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 October 13, 2020, 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 October 13, 2020, at 1:00 p.m.

The court will issue an order.

12. [13-30991](#)-B-13 ROBERT/ALICE SCHIEBERL MOTION TO AVOID LIEN OF
[PGM-1](#) Peter G. Macaluso AMERICAN EXPRESS BANK FSB
9-18-20 [[67](#)]

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, and may appear at the hearing to offer oral argument. However, in light of court closures due to the COVID-19 pandemic, 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 to the 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 conditionally grant the motion to avoid lien and continue the hearing to **October 13, 2020, at 1:00 p.m.**

This is a request for an order avoiding the judicial lien of American Express Bank FSB ("Creditor") against the Debtors' property commonly known as 215 Shady Valley Court, Rio Linda, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$26,916.07. An abstract of judgment was recorded with Sacramento County on June 21, 2011, which encumbers the Property. All other liens recorded against the Property total \$222,876.66.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$153,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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, October 9, 2020, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee 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 October 13, 2020, 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 October 13, 2020, at 1:00 p.m.

The court will issue an order.

13. [20-22416](#)-B-13 NEREIDA LOPEZ
[RDG-2](#) Charles L. Hastings

CONTINUED MOTION TO DISMISS
CASE
9-15-20 [[21](#)]

Final Ruling

This matter was continued from September 29, 2020, to allow any response to be filed by Friday, October 2, at 5:00 p.m. No response has been filed. The motion is granted for reasons stated in the civil minutes at docket 25. The continued hearing date of October 6, 2020, at 1:00 p.m. is vacated.

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

The court will issue an order.

14. [20-22862](#)-B-13 PEGGY BOYNTON
[RDG-2](#) Pro Se

CONTINUED MOTION TO DISMISS
CASE
9-15-20 [[35](#)]

Final Ruling

This matter was continued from September 29, 2020, to allow any response to be filed by Friday, October 2, at 5:00 p.m. No response has been filed. The motion is granted for reasons stated in the civil minutes at docket 41. The continued hearing date of October 6, 2020, at 1:00 p.m. is vacated.

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

The court will issue an order.

15. [20-22371](#)-B-13 VICTOR/VARNA FACHA
[RDG-2](#) Jennifer G. Lee

CONTINUED MOTION TO DISMISS
CASE
9-15-20 [[31](#)]

Final Ruling

This matter was continued from September 29, 2020, to allow any response to be filed by Friday, October 2, at 5:00 p.m. A response was timely filed by the Debtors stating that they have prepared an amended plan. However, no amended plan or motion to confirm it has been filed with the court.

Nonetheless, the court will continue this matter one last time to **October 13, 2020, at 1:00 p.m.** If an amended plan and motion to confirm it have not been filed by October 9, 2020, at 5:00 p.m., the Chapter 13 Trustee's motion to dismiss will be granted for reasons stated at Dckt. 35.

The court will issue an order.

16. [19-26989](#)-B-13 MARGARET VIZINAU
[RDG](#)-5 Peter G. Macaluso

CONTINUED MOTION TO DISMISS
CASE
9-15-20 [[167](#)]

Final Ruling

This matter was continued from September 29, 2020, to allow any response to be filed by Friday, October 2, at 5:00 p.m. No response has been filed. The motion is granted for reasons stated in the civil minutes at docket 171. The continued hearing date of October 6, 2020, at 1:00 p.m. is vacated.

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

The court will issue an order.