

**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 12, 2021

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.

2. [14-26818](#)-B-13 MARIE TABAREZ
[JLK](#)-4 James L. Keenan

MOTION TO AVOID LIEN OF
DISCOVER BANK
9-14-21 [[112](#)]

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 judicial lien of Discover Bank.

This is a request for an order avoiding the judicial lien of Discover Bank ("Creditor") against the Debtor's property commonly known as 2754 34th Avenue, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$14,997.38. An abstract of judgment was recorded with Sacramento County on October 24, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$75,000.00 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 \$10.00 on Schedule C. The first deed of trust recorded against the Property totals \$152,330.00.

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).

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

The court will issue an order.

3. [21-22719](#)-B-13 ANTHONY MONTOYA OBJECTION TO CONFIRMATION OF
[KAZ-1](#) Charles L. Hastings PLAN BY NRZ PASS-THROUGH TRUST
Thru #4 XVIII
9-20-21 [[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 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 sustain the objection and deny confirmation of the plan.

U.S. Bank National Association, not in its individual capacity but solely as Trustee for the NRZ Pass-Through Trust XVIII, whose claim is secured only by a security interest in Debtor's principal residence, objects to confirmation on grounds that the Debtor's proposed monthly plan payment is not sufficient to cure the prepetition arrearage of \$34,303.68 over the 60-month term of the plan. Additionally, the Debtor does not have sufficient income based on Schedules I and J to support his monthly plan payments.

The plan filed August 11, 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. [21-22719](#)-B-13 ANTHONY MONTOYA OBJECTION TO CONFIRMATION OF
[RDG-1](#) Charles L. Hastings PLAN BY RUSSELL D. GREER
9-20-21 [[27](#)]

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 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 sustain the objection and deny confirmation of the plan.

First, Debtor has failed to provide admissible evidence that the plan is mathematically feasible. Paragraph 2.01 of Debtor's plan provides for a monthly plan payment of \$768.28. With the claims filed to date, that Debtor's plan payment will need to be at least \$1,348.00 in order for plan to be feasible as proposed paying unsecured creditors

0%.

Second, Debtor's plan provides for the amount of arrears due to Class 1 creditor Citi Bank at \$26,483.66, to be paid a monthly dividend of \$441.39 per month. Creditor as U.S. Bank National Association, not in its individual capacity but solely as Trustee for the NRZ Pass-Through Trust XVIII, has filed proof of claim no. 1-1 indicating the arrears on the mortgage total \$34,303.68. Debtor's plan is 60 months and the monthly dividend proposed for the Class 1 arrearage claim of the Citi Bank will take 78 months to pay off.

Third, Debtor's plan is not proposed in good faith under 11 U.S.C. §1325(a)(3). Debtor admitted at the meeting of creditors that he receives \$500.00 per month for a room rental. This income is not indicated on Debtor's schedules.

The plan filed August 11, 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. [17-21930](#)-B-13 FERGUS/KAREN MCDUGALL
[JCK-8](#) Gregory J. Smith

MOTION TO WAIVE SECTION 1328
CERTIFICATE REQUIREMENT, AS TO
JOINT DEBTOR
9-8-21 [[105](#)]

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 substitute Debtor to continue administration of the case, and waive the deceased Joint Debtor's certification otherwise required for entry of a discharge.

Debtor Fergus McDougall gives notice of the death of his wife Joint Debtor Karen McDougall and requests the court to substitute Fergus McDougall in place of Karen McDougall for all purposes within this Chapter 13 proceeding.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

- 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];
- 2) Continued administration of a case under chapter 11, 12, or 13 (Fed. R. Bankr. P. 1016);
- 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications (11 U.S.C. § 1328).

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Fergus McDougall for Karen McDougall as successor-in-interest, and to waive the § 1328 and financial management requirements for Karen McDougall. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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

The court will issue an order.

6. [21-22666](#)-B-13 MELISSA BELONG
[RDG-1](#) Richard Kwun

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
9-16-21 [[16](#)]

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). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on October 6, 2021. The confirmation hearing for the amended plan is scheduled for November 23, 2021. The earlier plan filed July 23, 2021, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

7. [14-22796](#)-B-13 FRANCISCO/LETICIA MOTION TO AVOID LIEN OF
[PGM-1](#) QUINTANA CITIBANK, N.A.
Thru #8 Peter G. Macaluso 9-13-21 [[64](#)]

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 of Citibank, N.A.

This is a request for an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against the Debtors' property commonly known as 655 Fountain Way, Dixon, California ("Property").

A judgment was entered against Joint Debtor in favor of Creditor in the amount of \$10,218.27. An abstract of judgment was recorded with Solano County on May 22, 2013, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of \$190,000.00 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 \$14,910.94 on Schedule C. The first and second deeds of trust recorded against the Property total \$175,089.06.

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.

8. [14-22796](#)-B-13 FRANCISCO/LETICIA MOTION TO AVOID LIEN OF CAPITAL
[PGM-2](#) QUINTANA ONE BANK (USA), N.A.
Peter G. Macaluso 9-13-21 [[70](#)]

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 of Capital One Bank (USA), N.A.

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 as 655 Fountain Way, Dixon, California ("Property").

A judgment was entered against Joint Debtor in favor of Creditor in the amount of

\$5,644.50. An abstract of judgment was recorded with Solano County on December 4, 2013, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of \$190,000.00 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 \$14,910.94 on Schedule C. The first and second deeds of trust recorded against the Property total \$175,089.06.

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.