

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

1. [19-23730](#)-B-13 TERRY/MICHELLE DINTELMAN MOTION TO MODIFY PLAN
 [GSJ-2](#) Grace S. Johnson 8-26-20 [[54](#)]

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.

2. [20-23930](#)-B-13 DORIAN/CATHERINE ANNE OBJECTION TO CONFIRMATION OF
[ETW-1](#) COLBERT PLAN BY BRILENA, INC.
Thru #3 Mikalah R. Liviakis 9-14-20 [[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). 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). A written reply has been filed to the objection.

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 overrule the objection and confirm the plan.

Brilena Inc., et al ("Creditor") objects to confirmation of the plan on grounds that Dorian Colbert and Catherine Colbert ("Debtors") are in default, this is the Debtors' second bankruptcy filing two days after the prior case was dismissed, and there have not been changed circumstances such that confirmation of this plan is uncertain and infeasible.

Debtors filed a response stating that there have been changed circumstances. First, Debtors' household size has decreased from four dependents down to three dependents with their 70-year-old mother moving out and not having to cover her monthly expenses. Second, Debtors now gross \$3,020 more per month in income than the prior case. Third, Debtors are current on plan payments in this case and were current during the previous case. The only reason for Debtors' voluntary dismissal of the prior case and filing of the second case was because Creditor did not timely file a proof of claim, and therefore the Trustee was not able to make necessary payments to Creditor.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed August 13, 2020, is confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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.

3. [20-23930](#)-B-13 DORIAN/CATHERINE ANNE MOTION FOR RELIEF FROM
[ETW-2](#) COLBERT AUTOMATIC STAY
Mikalah R. Liviakis 9-14-20 [[21](#)]
BRILENA, INC. VS.

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 the motion for relief from automatic stay.

Brilena Inc., et al ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 8943 Aylesford Lane, Stockton, California (the "Property"). Movant has provided the Declaration of Michele Canty to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Canty Declaration and supporting documents state that there are four pre-petition payments in default totaling \$7,550.44, and one post-petition payment in default totaling \$1,887.61. These numbers directly contradict those stated in the Canty Declaration filed with Movant's objection to confirmation at Item #2, ETW-1, filed on the same day as Movant's motion for relief from automatic stay. The Canty Declaration there states that the total amount of default is \$14,817.72. See dkt. 18, ETW-1. With these contradictions, the court cannot rely on the alleged default amount claimed by Movant.

Nonetheless, Debtors' plan filed August 13, 2020, provides for Movant's servicer, Unified Mortgage Services Inc. Loan Serv, in Class 1 and the Debtors list the amount of arrears as \$45,000.00. The plan is confirmed for reasons stated at Item #2, ETW-1. The motion for relief from automatic stay is therefore denied.

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

The court will issue an order.

4. [20-23544](#)-B-13 CIPRIANO SULAMO
Thru #5 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY THOMAS S HEFFERNAN,
KIMBERLY J. KOCH AND DEBRA R
SCHENK
9-22-20 [[49](#)]

CONVERTED: 10/08/2020

Final Ruling

The case having been converted to one under chapter 7, the objection to confirmation is overruled as moot.

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

The court will issue an order.

5. [20-23544](#)-B-13 CIPRIANO SULAMO
Pro Se

CONTINUED MOTION TO CONFIRM
PLAN
8-14-20 [[18](#)]

CONVERTED: 10/08/2020

Final Ruling

The case having been converted to one under chapter 7, the motion is denied as moot.

The motion is ORDERED DENIED AS MOOT 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 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 not confirm the first amended plan.

Feasibility of the plan depends on the granting of a motion to value collateral of American Honda Finance Corporation. That matter was denied on October 6, 2020, for reasons stated at docket 44.

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 WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

7. [20-21351](#)-B-13 DAVID/ANN READING
[JAD](#)-1 Jessica A. Dorn

MOTION TO CONFIRM PLAN
8-20-20 [[34](#)]

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. [20-23782](#)-B-13 LAWRENCE/JENNY BOLDON
[BSH](#)-3 Brian S. Haddix

MOTION TO VALUE COLLATERAL OF
SYNCHRONY BANK KAWASAKI
9-11-20 [[37](#)]

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 collateral.

Debtors' motion to value the secured claim of Synchrony Bank Kawasaki ("Creditor") is accompanied by the Declaration of Lawrence Boldon. Debtors are the owners two 2011 Kawasaki STX-15F jet skis and one dual trailer (collectively "Personal Property"). The Debtors seek to value the Personal Property at a replacement value of \$16,450.00 as of December 20, 2018. As the owner, Debtors' opinion of value is some 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. 34-1 filed by Synchrony Bank is the claim which may be the subject of the present motion.

Discussion

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 time value is determined is the date of filing of the petition without deduction for costs of sale or marketing. *Id.*

The Debtors' motion and declaration both value the Personal Property as of December 20, 2018. This is not the date the petition was filed in this case, which was August 2, 2020. The date used by the Debtors was that of the commencement of the prior bankruptcy, case no. 18-27891.00. Automobiles by their very nature deteriorate rather quickly and can suffer a significant change in condition very rapidly and unexpectedly. *In re Barton*, 249 B.R. 561, 567 (Bankr. E.D. Wash. 2000). Therefore, it is unlikely that the replacement value of the Personal Property in this bankruptcy case is the same value that it was in the prior case nearly two years ago. The motion to value is denied.

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

The court will issue an order.

9. [20-20387](#)-B-13 PABLO/TERESA CHAGOYA
[NAR-1](#) Charles L. Hastings
Add on #12-13

MOTION TO VALUE COLLATERAL OF
TRAVIS CREDIT UNION
9-25-20 [[60](#)]

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 the courthouse closure 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 deny without prejudice the motion to value collateral.

Pablo Chagoya and Teresa Chagoya ("Debtors") move to value the secured claim of Travis Credit Union ("Creditor"). The motion is accompanied by the Declaration of Pablo Chagoya. Debtors are the owner of a 2015 Chevy Equinox ("Vehicle"). The Debtors seek to value the Vehicle at a trade-in value of \$8,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some 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. 4-1 filed by Travis Credit Union 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 Debtors' valuation is based on a "trade-in" value. 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.

10. [13-28605](#)-B-13 JUAN RIGGINS
[PGM](#)-4 Peter G. Macaluso

CONTINUED MOTION TO AVOID LIEN
OF THE GOLDEN 1 CREDIT UNION
9-17-20 [[99](#)]

Final Ruling

The motion to avoid lien was continued from October 6, 2020, to allow any opposition or response to be timely filed and served by October 9, 2020, at 5:00 p.m. No opposition or response was filed. Therefore, the court's conditional ruling granting the motion at dkt. 105 is the court's final decision. The continued hearing on October 13, 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.

11. [20-22371](#)-B-13 VICTOR/VARNA FACHA
[RDG-2](#) Jennifer G. Lee

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

Final Ruling

The motion to dismiss case was continued from October 6, 2020, to allow debtors Victor Facha and Varna Facha ("Debtors") to file an amended plan and motion to confirm it by October 9, 2020, at 5:00 p.m. An amended plan and notice of hearing were timely filed. Therefore, the Debtors have taken further action to prosecute this case and have not caused unreasonable delay that is prejudicial to creditors. The Chapter 13 Trustee's motion to dismiss case is denied without prejudice and the continued hearing on October 13, 2020, at 1:00 p.m. is vacated.

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

The court will issue an order.

12. [20-20387](#)-B-13 PABLO/TERESA CHAGOYA CONTINUED OBJECTION TO
[DWE-1](#) Charles L. Hastings CONFIRMATION OF PLAN BY FREEDOM
Thru #13 MORTGAGE CORPORATION
See Also #9 8-26-20 [[45](#)]

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). A 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 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 sustain the objection and deny confirmation of the plan for reasons stated at Item #13, RDG-1.

Freedom Mortgage Corporation ("Creditor") objects to confirmation of the plan on grounds that the plan fails to provide for the curing of the default on its claim. Pablo Chagoya and Teresa Chagoya ("Debtors") filed a response stating that they have entered into a loan modification with Creditor and that the Creditor will withdraw its objection to confirmation after confirmation of the processing of the loan modification with the correct internal department. The plan is not confirmable for reason stated at Item #13, RDG-1. The Creditor has not filed any withdrawal of its objection. Therefore, the objection is sustained.

The plan filed June 29, 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.

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

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). A 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 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 sustain the objection and deny confirmation of the plan.

Feasibility of the plan depends on the granting of a motion to value collateral of Travis Credit Union. That matter is heard at Item #9, NAR-1, and is denied without prejudice. Other issues raised by the Chapter 13 Trustee, namely attorney's fees, income verification documents, and inappropriate voluntary retirement contributions, have been resolved by the Debtors.

Due to the denied motion to value collateral, the plan filed June 29, 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.

14. [12-39391](#)-B-13 JAMES/DEBORAH BISHOP
[MJH](#)-2 Mark J. Hannon

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

Final Ruling

The motion to avoid lien was continued from October 6, 2020, to allow any opposition or response to be timely filed and served by October 9, 2020, at 5:00 p.m. No opposition or response was filed. Therefore, the court's conditional ruling granting the motion at dkt. 63 is the court's final decision. The continued hearing on October 13, 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. [13-30991](#)-B-13 ROBERT/ALICE SCHIEBERL CONTINUED MOTION TO AVOID LIEN
[PGM](#)-1 Peter G. Macaluso OF AMERICAN EXPRESS BANK FSB
9-18-20 [[67](#)]

Final Ruling

The motion to avoid lien was continued from October 6, 2020, to allow any opposition or response to be timely filed and served by October 9, 2020, at 5:00 p.m. No opposition or response was filed. Therefore, the court's conditional ruling granting the motion at dkt. 75 is the court's final decision. The continued hearing on October 13, 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.