

**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: November 3, 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  
Modesto, California

**November 3, 2020 at 1:00 p.m.**

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1. [20-90262](#)-B-13 KATHY HARDISTY CONTINUED MOTION TO CONFIRM  
[CLH](#)-4 Charles L. Hastings PLAN  
**Thru #2** 9-8-20 [[169](#)]

**Final Ruling**

The motion to confirm the first amended plan is denied without prejudice, and the first amended plan is not confirmed, for the reasons stated in the ruling at Item #2, docket 183 (CLH-5).

2. [20-90262](#)-B-13 KATHY HARDISTY MOTION TO SELL  
[CLH](#)-5 Charles L. Hastings 10-13-20 [[183](#)]

**Final Ruling**

There are two related matters before the court, both filed by Debtor Kathy Hardisty ("Debtor"). One is a motion to confirm the Debtor's first amended plan. Dkt. 169. The other is a motion to sell real property located at 556 Toyon Drive, San Andreas, California ("Property"). Dkt 183. Each affects the other. The Chapter 13 Trustee ("Trustee") and secured creditor Laguna Gold Mortgage ("Creditor") filed oppositions to the sale motion.<sup>1</sup> Creditor also filed an opposition to the motion to confirm and opposed confirmation of the Debtor's first amended plan. Debtor filed replies.

At least with regard to the sale motion, the Debtor has apparently satisfied the Trustee's concerns. Creditor also filed a last-minute conditional withdraw of its opposition to the sale motion in which it consents to the sale of the Property subject to certain conditions. Some of the conditions are conditions the court intended to impose on the sale. To the extent Creditor's conditions are not duplicative they are overruled. Creditor still opposes confirmation of the first amended plan.

The hearing on the motion to confirm the first amended plan was continued to the sale motion hearing date, *i.e.*, November 3, 2020, at 1:00 p.m. For the reasons explained below, the motion to sell the Property will be **ORDERED CONDITIONALLY GRANTED** and the motion to confirm the first amended plan will be **ORDERED DENIED WITHOUT PREJUDICE** and the first amended plan will not be confirmed.

A sale of the Property is in the best interest of creditors and the estate. According to the Trustee, the proposed sale of the Property will generate sufficient funds to pay all secured and unsecured claims in full- Creditor's secured claims included. Although a sale of the Property will fully fund a plan, for the reasons explained below it cannot fund the first amended plan.

As the court explained in the abstention order filed in the related adversary proceeding between the Debtor and Creditor, the first amended plan was filed in bad

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<sup>1</sup>Creditor holds a first and a second deed of trust on the Property.

faith. The Debtor's decision to sell the Property after the court made that observation in an apparent effort to avoid an imminent dismissal does not alter the initial bad faith filing of the first amended plan.

The first amended plan also lacks any reference to the terms the court will impose as a condition of a sale of the Property and the payment of Creditor's secured claims from the sale proceeds. Those terms are based on the apparent last-minute jockeying reflected in the filings on the docket. Moreover, given the parties' apparent desire to litigate, the Debtor's stated intention to continue with state court litigation, and the general lack of trust and cooperation between the Debtor and Creditor the court will not confirm a plan with ambiguities and potential inconsistencies in the sale of the Property and the payment of claims- Creditor's secured claims in particular.

As stated above, the sale motion will be ordered conditionally granted, and the Debtor is authorized sell the Property, subject to the following conditions:

- (1) the sale order shall be the Trustee's standard sale order as augmented by conditions imposed in this ruling;
- (2) Creditor's secured claims shall be paid in the full amount of Creditor's escrow demand without deduction, offset, or setoff;
- (3) in the Trustee's discretion, and at the Trustee's direction, Creditor may be paid from sale proceeds at the close of escrow or, if all escrow proceeds are to be paid to the Trustee according to the standard terms of the Trustee's sale order, the Trustee is authorized to disburse funds to Creditor in an amount equal to Creditor's escrow demand;
- (4) the Debtor shall continue to make all required monthly payments on Creditor's secured claims pending the close of escrow;
- (5) subject to the court's ruling in the related adversary proceeding between the Debtor and Creditor, the Debtor retains whatever rights she has or may have to seek a reimbursement or reduction of funds paid to Creditor in satisfaction of Creditor's escrow demand;
- (6) escrow shall close 60 days from October 12, 2020, or by December 11, 2020;
- (7) if escrow timely closes and Creditor is paid the full amount of its escrow demand, the Debtor shall have two options: (1) voluntarily dismiss this case and pay remaining creditors outside of bankruptcy; or (2) file, set, and serve a second amended plan which proposes to pay remaining creditors; and
- (8) if escrow does not close by December 11, 2020, this case shall be dismissed without further hearing on the basis it was filed in bad faith, as stated in the court's prior ruling denying confirmation of the initial plan and in the abstention order entered in the related adversary proceeding, and based on the Debtor's inability to confirm a feasible plan. Dismissal rather than conversion is in the best interest of creditors and the estate in that conversion may require a trustee to operate a rehabilitation facility on the Property and likely would involve litigation over ownership interests in the Property. Any single or joint case subsequently filed (or re-filed) by the Debtor shall be assigned to Department B.

The Trustee shall prepare an order consistent with its standard sale order and the terms of this ruling.

**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 Debtors' plan provides for payments to LoanCare LLC for post-petition arrears in the amount of \$4,152.04 but that the correct amount in post-petition arrears is actually \$6,228.06. The Trustee acknowledges, however, that if a timely October 2020 plan payment of \$4,784.00 is tendered, the Debtors' post-petition arrears will only total \$2,076.02 after the October disbursements.

Debtors filed a response stating that they will tender a timely October payment and that therefore the post-petition arrears will only be \$2,076.02, which is covered by the plan.

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 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.