

**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: 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  
Sacramento, California

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

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1. [20-21610](#)-B-13 SHANNON DOW MOTION FOR RELIEF FROM  
[SW-1](#) Mikalah R. Liviakis AUTOMATIC STAY  
10-14-20 [[19](#)]

ALLY BANK VS.

**Final Ruling**

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). In light of the COVID-19 pandemic and court closures, 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 for relief from automatic stay and **continue the matter to November 10, 2020, at 1:00 p.m.**

Ally Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Toyota Camry (the "Vehicle"). The moving party has provided the Declaration of Lauren Joslin to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Joslin Declaration states that there the Debtor is in default totaling \$6,219.51. This consists of both pre- and post-petition past due payments.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$20,308.60, as stated in the Joslin Declaration. Debtor lists the Vehicle as having been repossessed in February 2020 and that the value is \$0.00 according to the Statement of Financial Affairs for Individuals Filing for Bankruptcy.

**Discussion**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).]

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

November 3, 2020 at 1:00 p.m.  
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And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

**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, November 6, 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 Movant, 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 November 10, 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 November 10, 2020, at 1:00 p.m.

The court will issue an order.

2. [19-24520](#)-B-13 GABRIEL/MARIA CECILIA MOTION FOR RELIEF FROM  
[EAT](#)-1 TAURO AUTOMATIC STAY  
Gregory J. Smith 9-24-20 [[22](#)]  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY VS.

CONTINUED TO 11/17/2020 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTORS'  
MOTION TO MODIFY PLAN.

**Final Ruling**

No appearance at the November 3, 2020, hearing is required. The court will issue an  
order.

### **Final Ruling**

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). In light of the COVID-19 pandemic and court closures, 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 motion seeks permission to purchase a 2016 Jeep Patriot, the total purchase price of which is \$21,021.28. The total amount to be paid through the agreement would be \$18,521.28 since the Debtor will be making a down payment of \$2,500.00, the source of which is Debtor's adult son who is willing to gift the down payment to the Debtor with no expectation of repayment. The agreement calls for 48 monthly payments of \$385.86 beginning November 5, 2020. The interest rate is 20.79%.

The Debtor currently owns a 2010 Chrysler 300, a 10-year old vehicle that is not currently operable. The Chrysler 300 is financed through Chase Auto, a Class 2 creditor that is being paid through the plan at a rate of \$104.00 per month for 36 months. To make the vehicle operable again, the Debtor would have to pay for repairs that exceed the current fair market value of the car.

The Chapter 13 Trustee filed an opposition stating that the Debtor is currently delinquent in plan payments and must pay \$630.00 by the date of the hearing to be current, and that the interest rate of 20.79% is unreasonable.

The Debtor filed a response stating that she will be current by the date of the hearing. The Debtor also acknowledges that the interest rate is high but that she was not able to obtain any financing from other lenders who outright rejected her application. Debtor states that she has made reasonable efforts to obtain better financing terms and that she needs a vehicle since she has no alternative means of transportation.

### **Discussion**

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court agrees with the Trustee that the interest rate is unreasonable. Although the court recognizes that the Debtor has made efforts to obtain financing with other lenders, the loan calls for a substantial interest charge of 20.79%. The monthly plan payment for this Vehicle is \$281.86 greater than Debtor's existing monthly car payment, and the Debtor has defaulted on plan payments in the past. It is unclear whether the Debtor can afford the new car payment, and this transaction is not in her best interests.

The motion is denied without prejudice.

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

The court will issue an order.

4. [20-24072](#)-B-13 LORENA FLORES  
[RDG-1](#) Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
10-14-20 [[18](#)]

### **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 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.

First, Debtor's income is insufficient to fund the plan. Debtor's Schedule I, Line 8a, indicates net business income of \$5,000.00. Debtor admitted at her meeting of creditors that she is not working at this time and is currently only earning unemployment income of \$1,800.00 per month.

Second, Edward Schellinck has filed a secured proof of claim 7-1 in the amount of \$14,409.77. Debtor's plan does not provide for this secured claim.

Third, Paragraph 3.08(a) of Debtor's plan provides in relevant part that "the 'monthly dividend' payable to each Class 2A and 2B claim is an equal monthly payment sufficient to pay each claim in full with interest at the rate specified . . . ." This provision is included in the plan so that the plan complies with 11 U.S.C. § 1325(a)(5)(B)(iii). For this to be the case, the monthly dividend to creditor Blackmun Equip Leasing Co. must be at least \$802.21 and the monthly dividend to creditor Credit Acceptance must be at least \$274.56 to fund these claims within the 60-month plan term.

Fourth, the plan payment in the amount of \$1,200.00 does not equal the aggregate of the Trustee's fees, administrative expenses, and Class 2 secured claims. The aggregate of these monthly amounts plus Trustee's fees is \$1,267.69.

The plan filed August 24, 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.

5. [20-24076](#)-B-13 DON HARDING AND VIRIGNIA OBJECTION TO CONFIRMATION OF  
[RDG-1](#) SIMMS PLAN BY RUSSELL D. GREER  
Peter G. Macaluso 10-14-20 [[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). 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 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.

The plan is not the Debtors' best efforts under 11 U.S.C. § 1325(b). Joint Debtor Virginia Simms admitted at the meeting of creditors that she earns approximately \$3,494.00 per month from retirement income. This income has not been listed on Debtors' Schedule I or on the Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period (Official Form 122C-1). Without amended schedules that include all of Debtors' income, the Chapter 13 Trustee is unable to determine whether the plan provides that all of Debtors' projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan.

The plan filed August 24, 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.

### **Final Ruling**

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). In light of the COVID-19 pandemic and court closures, 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 Chapter 13 Trustee filed an opposition. Debtor filed a reply.

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

Debtors seek to incur debt for the purpose of refinancing their home. The amount borrowed is \$337,000.00 with an interest rate of 2.500%. Monthly installments will be \$2,137.71, which is lower than their current mortgage payment of \$2,542.40.

Trustee has filed an opposition stating that the Debtors are in month 60 of their plan and need \$2,601.71 to complete their plan.

Debtors state that the delinquency arose due to a car accident and was not the result of failing to make plan payments. Debtors propose to pay the required \$2,601.71 while also extending the plan duration to 64 months and paying \$940 per month to cover the vehicle, which is collateral to a secured creditor under the plan. Debtors state that they communicated this to the Trustee but have not heard back.

### **Discussion**

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The post-petition debt to refinance the Debtors' home does not appear to be unreasonable since it will result in a lower monthly mortgage payment. However, the Debtors do not cite any legal authority to extend their plan payment to 64 months or that would permit them to modify the plan to do so at this juncture.

The motion is denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE 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 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 Debtor has 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 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.

8. [20-21594](#)-B-13 RUSSELL/GLORIA HUTSELL MOTION TO DISMISS CASE  
[RDG-1](#) Steele Lanphier 10-8-20 [[58](#)]

**Final Ruling**

The Chapter 13 Trustee's motion was continued from October 27, 2020, to allow any response to be filed by 5:00 p.m. on October 30, 2020. A response was timely filed by the Debtors stating that they filed an amended plan, the confirmation hearing of which is set for December 8, 2020. Therefore, the Debtors have taken further action to confirm a plan and have not caused unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c) (1).

The motion to dismiss case is therefore denied without prejudice.

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

The court will issue an order.