

**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 24, 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 24, 2020 at 1:00 p.m.

1. [19-91014](#)-B-13 SANDRA RODRIGUEZ MOTION TO DISMISS CASE
 [RDG-2](#) Brian S. Haddix 11-9-20 [[112](#)]

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.

Due to court closures in response 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 dismiss case and continue the matter to **December 1, 2020, at 1:00 p.m.**

The Debtor has failed to take further action to confirm a plan. A hearing on confirmation of Debtor's plan was held on September 8, 2020, and confirmation was denied. Debtor's failure to thereafter confirm a plan is unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

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 27, 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 December 1, 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 December 1, 2020, at 1:00 p.m.

The court will issue an order.

2. [17-90520](#)-B-13 DENNIS/SONYA GILBREATH MOTION TO DISMISS CASE
[RDG-5](#) Richard L. Sturdevant 11-10-20 [[138](#)]

Final Ruling

The Chapter 13 Trustee has filed a motion to dismiss its pending motion. The motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar and the case will proceed in this court.

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

The court will issue an order.

3. [20-90532](#)-B-13 RICHARD COLE ORDER TO SHOW CAUSE - FAILURE
Thru #4 Muoi Chea TO PAY FEES
10-20-20 [[39](#)]

Final Ruling

The court's decision is to discharge the Order to Show Cause.

The Order to Show Cause was issued due to Harley-Davidson Credit Corp.'s failure pay the \$181.00 fee for filing a motion of relief from automatic stay. The court's docket reflects that the filing fee was paid on November 18, 2020.

The order to show cause is ORDERED DISCHARGED for reasons stated in the minutes.

The court will issue an order.

4. [20-90532](#)-B-13 RICHARD COLE CONTINUED MOTION FOR RELIEF
APN-1 Muoi Chea FROM AUTOMATIC STAY
10-6-20 [[30](#)]

HARLEY-DAVIDSON CREDIT CORP.
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 grant the motion for relief from stay.

Harley-Davidson Credit Corp. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Harley-Davidson FLHRC Road King Classic (the "Vehicle"). The moving party has provided the Declaration of Hemlata Mistry to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Mistry Declaration states that the Debtor intends to surrender the Vehicle. This is supported by Debtor's plan filed August 3, 2020, which lists the Vehicle in Class 3. Separately, Movant's supporting documents show a pre-petition default of \$2,682.09 and a post-petition default of \$301.02.

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). 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. Indeed, the Debtor's plan filed August 3, 2020, lists the Vehicle in Class 3 to surrender the collateral.

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.

The motion is ORDERED GRANTED 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). Parties in interest were not required to file a written response or opposition, and may appear at the hearing to offer oral argument.

Due to court closures in response 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 dismiss case and continue the matter to **December 1, 2020, at 1:00 p.m.**

First, the Debtor is delinquent \$2,350.00 in plan payments. The last payment received by the Debtor was on October 19, 2020. The Debtor is in material default and is grounds for dismissal pursuant to 11 U.S.C. § 1307(c)(6).

Second, Debtor's plan is in month 13 and will take another 78 months to complete. This is due to Debtor's failure to file a modified plan as required by Local Bankr. R. 3007-1(d)(5) to account for the allowed claims, which prevent Debtor's plan from timely completing.

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

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 27, 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 December 1, 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 December 1, 2020, at 1:00 p.m.

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). Parties in interest were not required to file a written response or opposition, and may appear at the hearing to offer oral argument.

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The court's decision is to conditionally grant the motion to dismiss case and continue the matter to **December 1, 2020, at 1:00 p.m.**

The Debtor has failed to take further action to confirm a plan. An objection to confirmation of Debtor's plan was heard on October 6, 2020, and the court sustained the objection and denied confirmation of the plan. Debtor's failure to thereafter confirm a plan is unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

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 27, 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 December 1, 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 December 1, 2020, at 1:00 p.m.

The court will issue an order.

Final Ruling

Due to court closures in response 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 has reviewed the objection and its related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket in this case. See Fed. R. Evid. 201(c)(1).

Because this matter is heard on shortened time, the objection will be conditionally sustained and the hearing continued to **December 1, 2020, at 1:00 p.m.**

Discussion

Applicant Joe Angelo ("Applicant") objects to the payment of the remainder of the "no-look" attorney's fee approved at the inception of this case to Sagaria Law, P.C. ("Sagaria Law") and requests to have unearned and unpaid attorney's fees due Sagaria Law under the confirmed plan be paid instead to his current law firm, Gale, Angelo, Johnson, & Pruett, P.C.

Applicant asserts that it is unjust for Sagaria Law to collect the balance of the "no-look" fee while it is unable to perform any ongoing services on behalf of Debtor Carrie Flores ("Debtor") since 1) Sagaria Law closed in March of 2019; 2) Sagaria Law does not employ any attorneys that can provide any type of legal assistance to the Debtor in this matter; and 3) Sagaria Law cannot perform its duties under the Rights and Responsibilities that is filed in this case. Applicant's objection is well taken.

Section § 329 of the Bankruptcy Code gives the bankruptcy court broad discretion to re-examine an attorney fee agreement and to modify it when the fees exceed the reasonable value of services provided. *Henderson v. Sundquist (In re Sundquist)*, 827 Fed.Appx. 763 (9th Cir. 2020). When services are not (or as here can no longer be) provided, the payment of any fee exceeds reasonable value. In other words, unprovided services have no value which means any fee paid in circumstances where services are not (or cannot be) provided is inherently not reasonable.

Based on the foregoing, Applicant's objection is conditionally sustained. The court will exercise its discretion to modify the original fee agreement approved at the inception of this case and allow the unpaid balance of the "no-look" fee to be paid to Applicant and his law firm as the presumptive reasonable value of services provided and to be provided to the Debtor.

Conditional Nature of this Ruling

Because the objection is heard on shortened time, any party in interest shall have until 5:00 p.m. on Friday, November 27, 2020, to file and serve an opposition or other response. 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 objection will be deemed sustained 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 December 1, 2020, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the

objection on December 1, 2020, at 1:00 p.m.

The court will issue an order.