

**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: JANUARY 14, 2025

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

January 14, 2025 at 1:00 p.m.

1. [24-90511](#)-B-13 MATTHEW MANUEL MOTION TO CONFIRM PLAN
[FAT](#)-4 Flor De Maria A. Tataje 11-29-24 [[48](#)]

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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

January 14, 2025 at 1:00 p.m.

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 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 not confirm the first amended plan.

First, Navy Federal Credit Union has a secured claim that is not properly classified as Class 2. The Trustee is not opposed to striking the treatment to Navy Federal Credit Union in Class 2 and adding the following language to the Nonstandard Provisions of an order confirming plan. "Post-petition mortgage fees, expenses, and charges as reflected on the Notice of Post-Petition Mortgage Fees, Expenses, and Charges filed September 23, 2024 by Navy Federal Credit Union shall be paid a \$15.84 per month until paid in full."

Second, Debtor is delinquent \$7,178.00. A total of \$32,028.00 has come due through and including November 2024, but the Debtor has only paid a total of \$24,850.00 to date. An additional plan payment of \$5,338.00 was due on December 25, 2024. The Debtor is not be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6).

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 for reasons stated in the minutes.

The court will issue an order.

3. [24-90340](#)-B-13 ADRIAN RODRIGUEZ
MC-1 Muoi Chea
Thru #4

MOTION TO EMPLOY FATHOM REALTY
GROUP, INC. AS BROKER(S)
12-10-24 [[21](#)]

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 to employ as not necessary under 11 U.S.C. § 327.

Debtor Adrian Rodriguez ("Debtor") seeks to employ real estate brokerage firm Fathom Realty Group, Inc. ("Fathom Realty") pursuant to 11 U.S.C. § 327. Debtor believes that Fathom Realty's appointment and retention is necessary to assist Debtor in establishing the fair market value of property located at 2408 Craftsman Street, Turlock, California ("Property") and to market and sell the Property for the benefit of Debtor and all creditors in interest.

In consideration of these services, Fathom Realty will receive a commission of either 4.5% of the purchase price if it is the only real estate agent involved in the transaction or 2.5% if there are separate seller's and buyer's agents. Debtor asserts that neither Fathom Realty nor any of its employees has any connection with the Debtor, any creditor's of the bankruptcy estate, or any other parties-in-interest or their agents.

Discussion

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Some courts hold that § 327 applies to the employment of professionals by Chapter 13 trustees and Chapter 13 debtors. See e.g., *Wright v. Csabi (In re Wright)*, 578 B.R. 570 (Bankr. S.D. Tex. 2017) (§ 327(e)); *In re Goines*, 465 B.R. 704 (Bankr. N.D. Ga. 2012) (§ 327(e)); *In re Jenkins*, 406 B.R. 817 (Bankr. N.D. Ind. 2009) ("the term 'trustee' in 11 U.S.C. § 327(e) is to be read as 'Chapter 13 debtor'"). However, a majority of courts hold that § 327 applies only when Chapter 13 trustees seek to employ professionals and it is inapplicable to the employment of professionals by Chapter 13 debtors. See e.g., *In re Gilliam*, 582 B.R. 459, 465-66 (Bankr. N.D. Ill. 2018) (§ 327 does not apply to Chapter 13 debtors); *In re Scott*, 531 B.R. 640, 644-45 (Bankr. N.D. Miss. 2015) (nothing suggests that "trustee" in § 327(e) means debtor); *In re Jones*, 505 B.R. 229, 231 (Bankr. E.D. Wis. 2014) ("[A]n individual chapter 13 debtor . . . is not a 'trustee' for purposes of § 327."); *In re Maldonado*, 483 B.R. 326, 330 (Bankr. N.D. Ill. 2012) (§ 327 does not apply to debtors in Chapter 13 cases); *In re Tirado*, 329 B.R. 244, 250 (Bankr. E.D. Wis. 2005) ("Therefore, § 327 of the Bankruptcy Code simply does not apply to chapter 13 debtors who seek to employ professionals.").

The majority consider the limitation of § 327 to a "trustee" and the omission of reference to Chapter 13 debtors significant. As the court in *Tirado* explained in the context of the debtor's request to employ a professional to assist the debtor in the sale of real property:

[Section] 327 does not apply to the employment of attorneys or other professionals by a chapter 13 debtor. Section 327 applies to trustees, and,

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pursuant to § 1107 of the Bankruptcy Code, when § 327 refers to the trustee, the reference includes the debtor in possession. [Internal citation omitted].

Each subsection of § 327 either focuses on the trustee or excludes chapter 13. See 11 U.S.C. §§ 327(a) ("the trustee ... may employ ..."); 327(b) ("the trustee may retain or replace ..."); 327(c) ("In a case under chapter 7, 12, or 11 of this title ..."); 327(d) ("the court may authorize the trustee to act as attorney or accountant"); 327(e) ("The trustee ... may employ ..."); and 327(f) ("The trustee may not employ ..."). Congress, through the use of plain and unambiguous language, has limited the scope of § 327 to trustees. Although chapter 11 debtors in possession have also been included under § 327 via § 1107, and chapter 12 debtors must comply with § 327 pursuant to § 1203, there is no corresponding section of chapter 13 making § 327 applicable to chapter 13 debtors.

Therefore, § 327 of the Bankruptcy Code simply does not apply to chapter 13 debtors who seek to employ professionals. The requirements of § 327 would be triggered by a chapter 13 trustee's application to employ a professional, but in this case, [the professional's] services were rendered to the Debtor, not the Trustee. For, unlike chapter 11 and 12 in which the debtor in possession has the same rights and duties when selling property and employing professionals as a trustee, "the [chapter 13] debtor shall have, exclusive of the trustee, the rights and powers of a trustee [to use, sell, or lease property]." 11 U.S.C. § 1303 (emphasis supplied).

Tirado, 329 B.R. at 250.

This court has previously followed the majority and found § 327 inapplicable to a debtor's request to employ a professional to assist the debtor in the sale of his residence. See e.g., *In re Slagle*, Case No. 18-27555 (Bankr. E.D. Cal. 2018), Dkts. 22 & 52. In so doing, the court applied *Tirado's* reasoning.

There does not appear to be any controlling case law on this matter in the Ninth Circuit. Nevertheless, the court has considered the pros and cons of each approach to arrive at a result that is consistent with the plain language of § 327 in particular and the intent of the Bankruptcy Code generally. And so in that regard, the court finds *Tirado's* reasoning and the majority position to be the better and better reasoned approach. Accordingly, the court concludes that it is not necessary for the Debtors' real estate professional's employment to be approved under § 327 in order to permit the real estate professional to assist the Debtors in the sale of the Property. The Debtors' motion is therefore denied.

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

The court will issue an order.

Final Ruling

The motion has been set for hearing on the notice required by 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). The defaults of the non-responding parties are entered.

The court has 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 grant the motion to sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor Adrian Rodriguez ("Debtor") proposes to sell property described as 2408 Craftsman Street, Turlock, California ("Property").

Proposed purchasers Navdeep Kaur and Maninderjit Singh have agreed to purchase the Property for \$560,000.00 all cash. The purchasers are strangers to Debtor and the sale is an arm's length transaction. The first deed of trust on the Property is held by Mr. Cooper totaling approximately \$470,328.40. Debtor anticipates receiving approximately \$60,538.24 after all liens on the home and costs are paid from the sale proceeds.

Nationstar Mortgage LLC d/b/a/ Mr. Cooper ("Creditor") filed a conditional non-opposition stating that it does not oppose the motion to sell on condition that its loan is paid off in full before satisfying any other lien on the Property for the amount due and owing on the date escrow closes.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate. The motion is granted and the stay under Bankruptcy Rule 6004(h) is waived.

Debtor's attorney shall submit an order consistent with the Trustee's standard sale language. The order shall be approved by the Trustee.

5. [24-90677](#)-B-13 TODD KOVACS
[LGT](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
12-19-24 [[20](#)]

CONTINUED TO 2/25/25 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED
MEETING OF CREDITORS SET FOR 2/19/25.

Final Ruling

No appearance at the January 14, 2025, hearing is required. The court will issue an
order.