

**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: February 1, 2022

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

February 1, 2022 at 1:00 p.m.

1. [21-23729](#)-B-13 EDUARDO RAMOS MOTION FOR RELIEF FROM
[KMM](#)-1 Lars T. Fuller AUTOMATIC STAY
12-27-21 [[20](#)]

VW CREDIT, 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 grant the motion for relief from stay.

VW Credit, Inc., d/b/a Audi Financial Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2019 Audi Q7 (the "Vehicle"). The moving party has provided the Declaration of Jennifer Tompkins to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Tompkins Declaration states that there are 2 pre-petition payments in default totaling \$2,277.22. Additionally, there is 1 post-petition payment in default totaling \$1,138.74.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$58,879.97 as stated in the Tompkins Declaration, while the value of the Vehicle is determined to be \$44,025.00 as stated also in the Tompkins Declaration.

Separately, Debtor has filed a non-opposition to the motion for relief from stay, and the plan filed October 29, 2021, lists Creditor's secured claim in Class 3 satisfied by the surrender of the Vehicle.

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*

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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 Debtors or the Estate. 11 U.S.C. § 362(d)(2). And the Debtor having filed a non-opposition to the motion, 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.

The request for relief from stay as to any non-filing co-debtor, who is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

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.

2. [21-23263](#)-B-13 MONIQUE COLLINS
[SDW](#)-1 Selwyn D. Whitehead

OBJECTION TO CLAIM OF
NATIONSTAR MORTGAGE LLC, CLAIM
NUMBER 2
12-7-21 [[28](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Debtor having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

3. [21-23268](#)-B-13 RAUL JUAREZ
[RLS](#)-1 Charles L. Hastings
And #6

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
12-28-21 [[56](#)]

FORETHOUGHT LIFE INSURANCE
COMPANY VS.

Final Ruling

The case having been dismissed at Item #6, RDG-3, the motion for relief from stay 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 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.

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 conditionally grant the motion for waiver of credit counseling due to physical disability and continue the matter to February 8, 2022, at 1:00 p.m.

Discussion

Pursuant to 11 U.S.C. § 109(h)(1), an individual may not be a debtor unless such individual has, during the 180-day period ending on the date of the filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency an individual or group briefing that outlined the opportunities for available credit counseling and assisted such an individual in performing a related budget analysis. 11 U.S.C. § 109(h)(1). However, pursuant to 11 U.S.C. § 109(h)(4), the requirement to obtain pre-filing credit counseling shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of disability. 11 U.S.C. § 109(h)(4). Disability, for the purposes of 11 U.S.C. § 109(h)(4), means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under 11 U.S.C. § 109(h)(1). *Id.*

Myrtis Martin ("Debtor") has moved for a court order waiving the pre-filing credit counseling requirement due to physical disability. On December 7, 2021, Debtor met with her attorney to discuss her options to prevent a foreclosure sale of her home and decided to file a chapter 13 bankruptcy case. Debtor had recently been released from the hospital, was visibly weak, and was unable to walk without assistance of a walker. For the remainder of December 2021, Debtor was admitted into and transferred between medical facilities, where she is still rehabilitating as of January 18, 2022. Debtor's attorney filed for chapter 13 relief on Debtor's behalf on December 29, 2021, but was unable to provide her with information about the credit counseling briefing prior to and after her hospitalization due to her physical condition. In the opinion of Debtor's attorney, Debtor would not have been able to provide financial information for such a briefing in person, by phone, or by Internet.

Due to Debtor's physical condition, hospital stay and subsequent admission to a healthcare facility, the court finds that Debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in-person, telephone, or Internet briefing required under 11 U.S.C. § 109(h)(1). Therefore, pursuant to 11 U.S.C. § 109(h)(4), Debtor's obligation to obtain pre-filing credit counseling under 11 U.S.C. § 109(h)(1) will be waived.

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, February 4, 2022, 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 herein above, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on February 8, 2022, 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 February 8, 2022, at 1:00 p.m.

5. [21-23144](#)-B-13 RUPERTO IDEMNE AND CONTINUED MOTION TO DISMISS
 [RDG](#)-2 JOSEPHINE MOMBAY CASE
 W. Steven Shumway 1-10-22 [[32](#)]

Final Ruling

This matter was continued from January 25, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, January 28, 2022. Although Debtors did not file a response, they did file a first amended plan on January 24, 2022, with a scheduled confirmation hearing date of March 15, 2022, at 1:00 p.m. Dkt. 43. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 47 and the continued hearing on February 1, 2022, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

6. [21-23268](#)-B-13 RAUL JUAREZ
[RDG](#)-3 Charles L. Hastings
See Also #3

CONTINUED MOTION TO DISMISS
CASE
1-11-22 [[62](#)]

Final Ruling

This matter was continued from January 25, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, January 28, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 66, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on February 1, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

7. [21-22482](#)-B-13 GLENDA SHELBY
[RDG](#)-1 Gregory J. Smith

CONTINUED MOTION TO DISMISS
CASE
1-10-22 [[56](#)]

Final Ruling

This matter was continued from January 25, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, January 28, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 60, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on February 1, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.