

**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 2, 2021

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 2, 2021 at 1:00 p.m.

1.	<u>20-25200</u> -B-13	DAVIE HUMPHREY	OBJECTION TO CONFIRMATION OF
	<u>RDG</u> -1	Marc Voisenat	PLAN BY RUSSELL D. GREER
			1-11-21 [<u>21</u>]

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). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on January 19, 2021. The confirmation hearing for the amended plan is scheduled for March 9, 2021. The earlier plan filed November 13, 2020, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT and the motion is ORDERED DENIED AS MOOT for reasons stated in the minutes.

The court will issue an order.

February 2, 2021 at 1:00 p.m.

Page 1 of 9

2. [20-25505](#)-B-13 LYNDIA GREEN
[RWF](#)-1 Robert W. Fong

MOTION TO VALUE COLLATERAL OF
FLAGSHIP CREDIT ACCEPTANCE, LLC
12-30-20 [[10](#)]

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 value the secured claim of Flagship Credit Acceptance at \$10,428.00.

Debtor's motion to value the secured claim of Flagship Credit Acceptance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Nissan Altima ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$10,428.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 2-1 filed by Flagship Credit Acceptance is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on February 24, 2018 based on the attachment to Claim No. 2-1, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$16,199.35. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$10,428.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will issue an order.

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 not permit the requested modification and not confirm the modified plan.

First, Debtor's plan is not eligible for a plan term extension to 84 months under 11 U.S.C. §1329(d). The amendment to 11 U.S.C. §1329 provides that "this amendment applies to any case for which a plan has been confirmed under section 1325 before March 27, 2020." The Order Confirming Plan (DN 19) that confirmed the original plan filed on January 9, 2020 was approved by the Court on May 26, 2020. Accordingly, Debtor is not eligible to modify the plan term to 7 years (84 months) under 11 U.S.C. §1329(d).

Second, the plan lists a Class 1 creditor as "Post-Confirmation Plan Arrears." It cannot be determined who the Debtor intends to be the creditor.

Third, the plan proposes a monthly payment of \$3,211.00 beginning in month 12 (January 2021). It cannot be determined whether this is mathematically feasible given the unclear Class 1 arrearages.

Fourth, the plan proposes to cure the arrears owed to Sun West Mortgage Company by making payments in equal monthly amounts. The proposed monthly dividend of \$354.38 would result in a 95-month plan term. A monthly dividend of \$460.43 beginning January 2021 is needed in order to pay this claim in full in 73 months. The Debtor is not eligible for an 84-month plan term.

Fifth, the Chapter 13 Trustee cannot make a separate disbursement of \$34.83 per month to OneMain for the 2003 Chevrolet Trailblazer. Section 3.01 of Debtor's plan provides that a claim will not be paid pursuant to this plan unless a proof of claim is filed by or on behalf of a creditor, including a secured creditor. The court notes that creditor OneMain/Portfolio Recovery Associates LLC filed a timely Claim No. 3-1 on January 31, 2020, listing two vehicles: a 2003 Chevy Trailblazer and 2005 Chevy Silverado.

Sixth, Debtor's plan proposes to reclassify Class 1 creditor, 1ST Security Bank of WA, as a Class 3 Surrender. This creditor has already received disbursements from the Trustee and those disbursed amounts are to be deemed allowed in the amount already paid.

Seventh, Section 7.01 of Debtor's plan proposes a monthly payment of \$3,211.00 beginning month 12 (January 2021). The Debtor has failed to file supplemental Schedules I and/or Schedule J to support the plan payment.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

The court will issue an order.

4. [20-25153](#)-B-13 MICHAEL/JOLENE YATES
[RDG](#)-2 Charles L. Hastings

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
12-21-20 [[24](#)]

Final Ruling

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(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 overrule the objection as moot.

The Trustee objects to the Debtors' use of California Code of Civil Procedure § 703.140(b)(1) & (5) to claim exempt \$42,541.69 in Debtors' assets. Debtors have exceeded the allowable amount for these exemptions, as the allowable amount is \$30,825.00.

The court's review of the docket reveals that the Debtors have filed an amended Schedule C on January 7, 2021, and the exempt assets using California Code of Civil Procedure § 703.140(b)(1) & (5) total \$29,275.00, which is less than the allowable amount. The Trustee's objection is therefore overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

5. [20-22371](#)-B-13 VICTOR/VARNA FACHA
[JLL](#)-2 Jennifer G. Lee

MOTION TO CONFIRM PLAN
12-16-20 [[56](#)]

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 Debtors have 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 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.

6. [20-21594](#)-B-13 RUSSELL/GLORIA HUTSELL MOTION TO APPROVE LOAN
[SLE](#)-3 Steele Lanphier MODIFICATION
1-15-21 [[82](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). 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 permit the loan modification and **continue the matter to February 9, 2021, at 1:00 p.m.**

Debtors seeks court approval to incur post-petition credit. Shellpoint Mortgage ("Creditor"), whose claim the plan filed January 15, 2021, provides for in Class 4, has agreed to a trial loan modification. The trial period payments begin February 1, 2021, and payment shall be \$2,210.41 per month, which includes principal and interest. The Debtors do not know the interest rate since this is not a permanent offer.

The motion is supported by the Declaration of Russell Hutsell and Gloria Hutsell. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms based on Debtors' revised current budget. See dkt. 84, exh. B.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is conditionally granted.

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 5, 2021, 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 February 9, 2021, 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 9, 2021, at 1:00 p.m.

The court will issue an order.

7. [20-20798](#)-B-13 MOLICA SON MOTION TO MODIFY PLAN
[GMW](#)-4 G. Michael Williams 12-9-20 [[72](#)]

DEBTOR DISMISSED: 12/10/20

Final Ruling

The case was dismissed on December 10, 2020. The motion to modify plan is therefore denied as moot.

The motion ORDERED DENIED AS MOOT for reasons stated in the minutes.

The court will issue an order.

8. [20-22120](#)-B-13 STEPHON TYLER
[RDG](#)-2 Richard L. Sturdevant

CONTINUED MOTION TO DISMISS
CASE
1-6-21 [[36](#)]

Final Ruling

This matter was continued from January 26, 2021, to allow the Debtor to file any response by January 29, 2021, as to why the case should not be dismissed for failure to confirm a plan. Debtor filed a timely response stating that the case should not be dismissed because a second amended plan has been filed. The court's review of the docket shows that an amended plan was filed and a confirmation hearing is set for March 2, 2021.

Cause does not exist to dismiss this case. The motion is denied and the case will remain pending.

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

The court will issue an order.