

**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: February 14, 2023

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

February 14, 2023 at 1:00 p.m.

1. [22-90442](#)-B-13 ALINA AMBRIS MOTION TO CONFIRM PLAN
[SSH](#)-2 Simran Singh Hundal 12-28-22 [[21](#)]

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.

February 14, 2023 at 1:00 p.m.

2. [22-90157](#)-B-13 OSCAR/SANDRA LOPEZ
[MMJ](#)-1 Lauren Franzella

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-11-23 [[50](#)]

CAPITAL ONE AUTO FINANCE 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.

Capital One Auto Finance, a division of Capital One, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2021 Kia Forte GT Sedan 4D (the "Vehicle"). The moving party has provided the Declaration of Jeanne Scharf to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Scharf Declaration states that there are 0 pre-petition payments in default but 5.140 post-petition payments in default. The post-petition payments in default total \$2,862.13.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$24,417.39, as stated in the Scharf Declaration, while the value of the Vehicle is determined to be \$22,377.00, as stated in Schedules A/B and D filed by Debtor.

Although Debtors' schedules and plan indicate that the Vehicle is driven by Debtors' daughter and that she makes the payments, evidence submitted by Movant shows a Retail Installment Sale Contract with the listed buyer as Debtor Sandra L. Lopez.

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 Debtors 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 Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors 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

February 14, 2023 at 1:00 p.m.

Page 2 of 7

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.

3. [22-90372](#)-B-13 HERBERT BASA AND DEW THAO MOTION TO CONFIRM PLAN
[HLG](#)-1 BASA 12-29-22 [[17](#)]
Kristy A. Hernandez

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.

4. [22-90477](#)-B-13 KAL KIRKLE
[JCW](#)-1 David C. Johnston

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
1-12-23 [[11](#)]

U.S. BANK TRUST NATIONAL
ASSOCIATION VS.

CONTINUED TO 2/21/23 AT 1:00 P.M.

Final Ruling

No appearance at the February 14, 2023, hearing is required. The court will issue an order.

- CONTINUED TO 3/14/2023 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 3/08/2023.

No appearance at the February 7, 2023, hearing is required. The court will issue an order.

6. [21-90229](#)-B-13 CHRISTOPHER/REBECCA CONTINUED MOTION TO CONTINUE
[SLH](#)-1 BRAILSFORD CASE ADMINISTRATION, SUBSTITUTE
Seth L. Hanson PARTY, AS TO DEBTOR
1-18-23 [[34](#)]

Final Ruling

This matter was continued from February 7, 2023, to provide additional time for Joint Debtor Rebecca Brailsford to file supporting documentation. Supporting documentation was timely filed. 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 substitute Joint Debtor Rebecca Brailsford to continue administration of the case.

Joint Debtor Rebecca Brailsford gives notice of the death of her husband Debtor Christopher Brailsford and requests the court to substitute Rebecca Brailsford in place of Christopher Brailsford for all purposes within this Chapter 13 proceeding.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

- 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];
- 2) Continued administration of a case under chapter 11, 12, or 13 (Fed. R. Bankr. P. 1016);
- 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications (11 U.S.C. § 1328).

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." Local Bankr. R. 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Rebecca Brailsford for Christopher Brailsford as successor-in-interest. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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

The court will issue an order.