

**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: March 5, 2024

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

March 5, 2024 at 1:00 p.m.

1. [23-24330](#)-B-13 DAVID YBARRA MOTION TO AVOID LIEN OF
[PGM-2](#) Peter G. Macaluso SUNPOWER CAPITAL, LLC
1-25-24 [[36](#)]

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 to avoid lien of Sunpower Capital, LLC.

This is a request for an order avoiding the judicial lien of Sunpower Capital, LLC ("Creditor") against the Debtor's property commonly known as 246 W. Colony Road, Ripon, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$69,626.93. An abstract of judgment was recorded with San Joaquin County on July 30, 2021, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$950,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 740.730 in the amount of \$600,000.00 on Schedule C. A first deed of trust recorded against the Property totals \$435,147.47.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will issue an order.

March 5, 2024 at 1:00 p.m.

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2. [23-23732](#)-B-13 RICHARD/GRACIE BORBA
Charles G. Hemming

MOTION TO CONFIRM PLAN
2-5-24 [[29](#)]

Final Ruling

The motion to confirm first amended plan was not 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). Due to the lack of proper notice, the motion to confirm plan is denied.

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. [19-21836](#)-B-13 ELLA WALKER
[WW-2](#) Mark A. Wolff

CONTINUED MOTION TO CONTINUE
CASE ADMINISTRATION, AS TO
DEBTOR
1-30-24 [[30](#)]

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 waive the deceased debtor's certifications otherwise required for entry of a discharge.

Tonia Murphy ("Ms. Murphy") moves to act as the representative of the deceased debtor, Ella Walker, who passed away on September 2, 2023, in this bankruptcy proceeding. Ms. Murphy is the daughter of the deceased debtor. Ms. Murphy also seeks the court's permission to file and sign the 11 U.S.C. § 1328 Certificate and the § 522(q) Certificate on behalf of the deceased debtor. Alternatively, Ms. Murphy states that the court may waive the requirements to file such certificates, which will enable entry of a discharge order in this case.

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 in part and the court will grant the motion to the extent it alternatively requests a waiver of § 1328 and financial management requirements for Ella Walker. 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.

4. [23-23053](#)-B-13 SANDRA/ANDY MUNOZ
[CDL-2](#) Colby D. LaVelle

MOTION TO CONFIRM PLAN
1-25-24 [[47](#)]

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, based on Debtors' schedules, the projected disposable income available to be applied to make payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b) (1) (B) is \$213.95 for 60 months or \$12,837.00, which would result in a 7.3% dividend to the general unsecured creditors. Debtors' plan provides for a 2.0% distribution to Debtors' general unsecured creditors. Therefore, Debtors' plan fails to comply with 11 U.S.C. § 1325(b) (1) (B) and may not be confirmed.

Second, Debtors are \$650.00 delinquent in plan payments. Debtors have paid \$3,250.00 into the plan to date. Debtors have failed to comply with 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.

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 third amended plan.

First, Debtors' plan is not feasible. Debtors' plan proposes payments of \$17,118.00 through month 4, and \$5,480.00 per month for months 5 through 47. Because Debtors failed to make the payment proposed in the plan, Debtors are delinquent \$5,480.00. Debtors last payment in the amount of \$770.00 was posted on January 2, 2024. An additional payment of \$5,480.00 will be due on February 25, 2024. 11 U.S.C. § 1325(a)(6).

Second, Debtors' plan provides for Superior Loan Servicing as a Class 1 creditor with a post-petition mortgage payment of \$2,916.67 in months 1 through 4, and \$1,750.00 per month to commence in month 5. Superior Loan Servicing has filed Claim No. 11-1 indicating a monthly post-petition mortgage payment of \$2,916.67. The Chapter 13 Trustee is not able to administer the plan as proposed. Debtors' plan is not feasible. 11 U.S.C. § 1325(a)(6).

Third, Debtors' plan provides for Flagship Credit Acceptance as a Class 2 claim in the amount of \$14,790.00 to be paid at 7.25% interest a monthly dividend of \$0.00 in months 1-4 and \$362.41 in months 5 through 47. Flagship Credit Acceptance has filed Claim No. 24-1 in the secured amount of \$14,388.38. Debtors' plan is a 47-month plan and the monthly dividend proposed for the Class 2 claim of Flagship Credit Acceptance will take 46 months to pay. As the dividends to the creditor are scheduled to begin in month 5 of the 47-month plan, Debtors' plan is not feasible. 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.

6. [23-24493](#)-B-13 MELANIE/SHANE BRITT OBJECTION TO CONFIRMATION OF
[CAS](#)-1 Peter G. Macaluso PLAN BY BMW BANK OF NORTH
Thru #8 AMERICA
2-13-24 [[48](#)]

Final Ruling

The case having been dismissed on March 1, 2024, the objection to confirmation is overruled as moot.

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

The court will issue an order.

7. [23-24493](#)-B-13 MELANIE/SHANE BRITT OBJECTION TO CONFIRMATION OF
[LGT](#)-1 Peter G. Macaluso PLAN BY LILIAN G. TSANG
2-13-24 [[52](#)]

Final Ruling

The case having been dismissed on March 1, 2024, the objection to confirmation is overruled as moot.

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

The court will issue an order.

8. [23-24493](#)-B-13 MELANIE/SHANE BRITT OBJECTION TO CONFIRMATION OF
[SKI](#)-1 Peter G. Macaluso PLAN BY HYUNDAI CAPITAL AMERICA
1-16-24 [[24](#)]

Final Ruling

The case having been dismissed on March 1, 2024, the objection to confirmation is overruled as moot.

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

The court will issue an order.

9. [23-24593](#)-B-13 ELISHA MOODY
[LGT-1](#) Le'Roy Roberson

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
2-14-24 [[16](#)]

Final Ruling

The *initial* Chapter 13 Plan filed December 22, 2023, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to March 12, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Debtor's Disclosure of Compensation of Attorney for Debtors (Form 2030) at Line 6 states that the agreed upon fee of \$8,500.00 does not include judicial lien avoidances and relief from stay actions. These services are included in the "No Look Fee" and should not be excluded. These services are also required by Local Bankr. R. 2017-1(a).

Second, Debtor's plan is not feasible. Debtor's plan provides for attorney fees in the amount of \$5,600.00 to be paid at a monthly dividend of \$106.25.00. Pursuant to Local Bankr. R. 2016-1(c)(4)(B), the payment flat fees must be paid in equal monthly installments over the term of the plan. Debtor's plan is a 60-month plan. Therefore, a monthly dividend of approximately \$93.33 is necessary to pay the claim in full within Debtor's 60-month plan term.

Third, Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 2.01 of Debtor's plan provides for plan payments of \$5,250.00 for 33 months, \$5,748.00 for 3 months, and \$6,128.00 for 24 months. Debtor has failed to provide admissible evidence that her plan is mathematically feasible. The Trustee's calculations indicate that Debtor's average plan payment will need to be at least \$6,124.00 in order for Debtor's plan to be feasible and pass liquidation.

Fourth, Debtor's plan provides for payment to Arizona Central Credit Union for a 2016 Ford Fusion with a monthly installment of \$380.00 and Exeter for a 2012 Nissan Juke SL as with a monthly installment of \$498.18 Class 4 claims. The claims of Arizona Central Credit Union and Exeter are misclassified as a Class 4 claims. These should be classified as a Class 2 claims in Debtor's plan since the secured claims mature during the life of the plan. Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6).

Fifth, Debtor's Form 122C-1 lists gross income on line 2 as \$13,975.21 per month. It is unclear how this figure was computed. Without a detailed month-by-month analysis, it cannot be determined whether the plan provides that all of Debtor's projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Sixth, based on Debtor's schedules, the projected disposable income available to be applied to make payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B) is \$2,414.62 for 60 months or \$144,877.20, which would result in an 100% dividend to the general unsecured creditors. However, Debtor's plan provides for 25% distribution to Debtor's general unsecured creditors. Therefore, Debtor's plan fails to comply with 11 U.S.C. § 1325(b)(1)(B).

Seventh, Debtor's Official Form 122C-1 is based on a household of 2 and provides that the median income for a household of 2 is \$92,781.00, which is an inaccurate figure for the median income in California. Without an accurate Official Form 122C-1 and Official Form 122C-2 if appropriate, it cannot be determined whether the plan provides that all of Debtor's projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Eighth, Debtor's plan provides for plan payments of \$5,250.00 for 33, \$5,748.00 for 3

months, and \$6,128.00 for 24 months, while Debtor's Schedule J (DN 1, page 32) shows that Debtor has a net income of \$9,024.11 per month. Accordingly, Debtor is not contributing all of her net income into the plan and the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

Ninth, Debtor's Schedule I combines gross wages and deductions from multiple jobs. Amended schedules that separate out all income is required for clarity.

The plan filed December 22, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), party in interest shall have until 5:00 p.m. on March 8, 2024, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtor, the Debtor's attorney, and/or the attorney for the objecting party by facsimile or email.

If no 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 March 12, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on March 12, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED and CONTINUED to March 12, 2024 at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has 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 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 permit the requested modification and not confirm the modified plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that it fails the liquidation test of 11 U.S.C. § 1325(a)(4). Debtor's scheduled non-exempt assets are able to pay 12.45% of general unsecured creditors yet Debtor's proposed plan provides for 0.0% dividend to general unsecured creditors. Additionally, the Trustee states that the plan is not feasible under 11 U.S.C. § 1325(a)(6) because the Debtor has failed to file supplemental Schedules I and/or J to support a plan payment of \$785.00 beginning January 2024 and \$933.00 beginning February 2024.

The Debtor filed a response stating that she will increase the dividend payable to general unsecured creditors and will also make the required payments in the amounts stated by the Trustee. However, problematic is that Debtor states she is still searching for employment and that her current income is through unemployment benefits that net \$810.00 every two weeks. Without current, regular employment, any increase in plan payments that Debtor states she can pay is speculative.

Given the aforementioned, 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.

11. [23-23808](#)-B-13 KATHY KENOLY
[LGT](#)-2 Pro Se

CONTINUED MOTION TO DISMISS
CASE
2-12-24 [[35](#)]

Final Ruling

This matter was continued from February 27, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 1, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 39, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on March 5, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.