

**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: March 15, 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  
Modesto, California

**March 15, 2022 at 1:00 p.m.**

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1. [21-90408](#)-B-13 SILVIA HERNANDEZ OBJECTION TO DEBTOR'S CLAIM OF  
[RDG](#)-3 Chinonye Ugorji EXEMPTIONS  
2-8-22 [[43](#)]

**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 sustain the objection and the exemptions are disallowed in their entirety.

First, the Trustee objects to the Debtor's use of California Code of Civil Procedure §703.140(b)(1) to claim exempt \$11,000.00 in a Vacant Lot at Ferreti Road in Debtor's Amended Schedule C. California Code of Civil Procedure §703.140(b)(1) provides an exemption for Debtor's aggregate interest in real property or personal property that the Debtor or a dependent of the Debtor uses as a residence. The Vacant Lot at Ferreti Road is not Debtor's residence, and accordingly, the exemption is not appropriate.

Second, the Trustee objects to the Debtor's use of California Code of Civil Procedure §703.140(b)(1) to claim exempt \$670.00 in cash and bank accounts in Debtor's Amended Schedule C. California Code of Civil Procedure §703.140(b)(1) provides an exemption for Debtor's aggregate interest in real property or personal property that the Debtor or a dependent of the Debtor uses as a residence. The Debtor has failed to show that these funds relate to Debtor's residence. Accordingly, the exemption is not appropriate.

Third, the Trustee objects to the Debtor's use of California Code of Civil Procedure §703.140(b)(1) to claim exempt \$500.00 in a pre-paid rental deposit in Debtor's Amended Schedule C. California Code of Civil Procedure §703.140(b)(1) provides an exemption for Debtor's aggregate interest in real property or personal property that the Debtor or a dependent of the Debtor uses as a residence. The Debtor has failed to show that the pre-paid rental deposit relates to Debtor's residence. Accordingly, the exemption is not appropriate.

The Trustee's objections are sustained and the claimed exemptions are disallowed.

The objection is ORDERED SUSTAINED and the claimed exemptions DISALLOWED for reasons stated in the minutes.

The court will issue an order.

**March 15, 2022 at 1:00 p.m.**

2. [19-90616](#)-B-13 ORLANDO/CHELSEA MOYA MOTION TO APPROVE LOAN  
[TLC-1](#) Tamie L. Cummins MODIFICATION  
[Thru #3](#) 2-4-22 [[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 permit the loan modification.

Debtors seek court approval to incur post-petition credit. M&T Bank ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification that will reduce Debtors' mortgage payment from the current \$1,870.35 a month to \$1,548.16 a month. Additionally, Debtors received notice in December 2021 that there was an escrow shortage and therefore their payment was increased from \$1,548.16 to \$1,575.38 a month. The modification will allow Debtors to maintain possession of their home as they could not afford the original mortgage payment any longer. The modification will also postpone delinquent payments until the end of their loan in addition to reducing the monthly mortgage payment.

The motion is supported by the Declaration of Orlando and Chelsea Moya. The Declaration affirms the Debtors' desire to obtain the post-petition financing. Although the Declaration does not state the Debtors' ability to pay this claim on the modified terms, the court finds that the Debtors will be able to pay this claim since it is a reduction from the Debtors' current monthly mortgage payments.

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 granted.

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

The court will issue an order.

3. [19-90616](#)-B-13 ORLANDO/CHELSEA MOYA MOTION TO MODIFY PLAN  
[TLC-4](#) Tamie L. Cummins 2-4-22 [[38](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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 by Trustee. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that the feasibility of Debtors' plan is contingent upon Debtors' updated income and expenses which include a lower mortgage payment, and two additional car payments. Debtors filed

two separate motions to incur debt at dkt. 26 and dkt. 31., and a motion to approve loan modification at Item #2 (dkt. 21). The court has already granted the two separate motions to incur debt at dkt. 51 and dkt. 52, and the court has approved the motion to approve loan modification at Item #2. Accordingly, Trustee's grounds for objecting to confirmation have been resolved and this objection will be overruled.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor<sup>s</sup> have filed evidence in support of confirmation. Trustee's objection is overruled. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, 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. [21-90418](#)-B-13 MIGUEL TERRIQUEZ  
[RJ-1](#) Richard L. Jare

OBJECTION TO CLAIM OF GRISELDA  
SOLORZANO, CLAIM NUMBER 8  
1-24-22 [[94](#)]

**Final Ruling**

Objection resolved by order issued on March 9, 2022. No appearance at the March 15, 2022, hearing is required.

5.     [11-91354](#)-B-13   CHARLES/ANGELA MYERS                   MOTION FOR ENTRY OF DEFAULT  
          [21-9013](#)           BSH-1                                 JUDGMENT  
MYERS ET AL V. ARETE PORTFOLIO                   2-8-22 [[28](#)]  
MANAGEMENT, LLC ET AL

**Final Ruling**

Resolved by order granting motion for entry of default judgment and separate default judgment issued from chambers. No appearance at the March 15, 2022, hearing is required.

6. [21-90158](#)-B-13 JILL MURPHY  
[LBF](#)-4 Lauren Franzella

MOTION TO INCUR DEBT  
2-28-22 [[49](#)]

### **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 deny the motion without prejudice.

The motion seeks permission to purchase a 2022 GMC Canyon, the total purchase price of which is \$18,791.71, with monthly payments of \$453.29. In the past year, Debtor has had several issues with their 2018 Dodge Ram. After contacting a lemon law attorney and communicating with the dealership, Debtor reached an agreement with the dealership wherein the dealership will buy back the 2018 Dodge Ram and Debtor will receive a net proceed of \$22,828.41. Debtor will use \$20,000.00 of the net proceeds as a down payment for the 2022 GMC Canyon. The prior monthly payment for the 2018 Dodge Ram was \$858.63, and the new monthly payment for the 2022 GMC Canyon will be \$453.29.

### **Discussion**

The Debtor does not address the reasonableness of incurring debt to purchase a brand new vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. The Debtor owned a 2018 Dodge Ram. When the dealership agreed to buy the 2018 Dodge Ram back, the Debtor received \$22,828.41 in net proceeds. Rather than using the proceeds to purchase a more affordable vehicle, the Debtor seeks to purchase a brand new 2022 GMC Canyon. Debtor does not address why she requires a brand new vehicle for her transportation needs, and whether she attempted to find a less costly vehicle- even a new one- with a lower monthly payment and lower operational costs, which would provide for a higher percentage payment to unsecured creditors.

The motion is denied without prejudice.

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

The court will issue an order.

7. [17-90447](#)-B-13 DONNELLE MC GEE  
[RAS](#)-1 Steven S. Altman

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
2-9-22 [[41](#)]

BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A. VS.

### **Final Ruling**

This matter was continued from March 8, 2022, to allow any parties in interest to file a response by 5:00 p.m. on March 11, 2022. A response was filed by the Debtor. In his response, Debtor requests the court consider awarding Debtor's counsel reasonable and necessary attorney's fees and costs as submitted by Debtor's reply and opposition to the relief from stay motion.

The Debtor requests a hearing for purposes of awarding attorney's fees under California Civil Code § 1717. The attorney's fees were incurred in connection with the Debtor's opposition to a motion for relief from the automatic stay which the court denied. For the reasons explained below, the request for a hearing and the request for attorney's fees will be denied without prejudice.

If the bankruptcy court did not need to determine whether a contract is enforceable, then the claim is not an action on the contract within the meaning of § 1717. *Bos v. Board of Trustees*, 818 F.3d 486, 489 (9th Cir. 2016) (quoting and adopting *In re Davison*, 289 B.R. 716, 723 (9th Cir. BAP 2003)). Here, the court denied the motion for relief from the automatic stay from which the request for attorney's fees arises on procedural grounds, *i.e.*, the absence of a local rule-required § 362 information sheet. The court did not reach the merits of the motion which means it did not determine the enforceability of any provision of the subject note or deed of trust on which the motion and opposition are based.

The court will reconsider this decision if the secured creditor re-files its motion and the motion requires the court to address the subject note and deed of trust.

The request for a hearing and for attorney's fees are ORDERED DENIED WITHOUT PREJUDICE.

The court ADOPTS its conditional order denying the motion for relief from the automatic stay as its final order.

The court will issue an order.



8. [20-90680](#)-B-13 ALVARO/JAZMIN HERNANDEZ CONTINUED OBJECTION TO CLAIM OF  
[RDG](#)-1 T. Mark O'Toole DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE, CLAIM  
NUMBER 6-1  
2-2-22 [[105](#)]

**Final Ruling**

This matter was continued from March 8, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 11, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 111, sustaining the objection to claim, shall become the court's final decision. The continued hearing on March 15, 2022, at 1:00 p.m. is vacated.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.