

**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 19, 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
Modesto, California

March 19, 2024 at 1:00 p.m.

1. [23-90616](#)-B-13 DAVID MARTINEZ OBJECTION TO CONFIRMATION OF
[ALG-1](#) Thomas A. Moore PLAN BY HASSAN BARADARANAZIMI,
Thru #3 TRUSTEE OF THE AZIMI FAMILY
TRUST DATED OCTOBER 21, 2021,
BORIS & MARINA CHECHELNITSKY,
TRUSTEES OF THE BORIS & MARINA
CHECHELNITSKY REVOCABLE LIVING
TRUST DATED JANUARY 8, 2016
2-2-24 [[25](#)]

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). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's to overrule the objection as moot but deny confirmation of the plan for reasons stated at Item #3, LGT-1.

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

The court will issue an order.

2. [23-90616](#)-B-13 DAVID MARTINEZ MOTION FOR RELIEF FROM
[ALG-2](#) Thomas A. Moore AUTOMATIC STAY
2-16-24 [[34](#)]

BORIS & MARINA
CHECHELNITSKY, TRUSTEES OF
BORIS & MARINA CHECHELNITSKY
REVOCABLE LIVING TRUST DATED
JAN.8, 2016 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

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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 deny the motion for relief from automatic stay.

Hassan Baradaran-Azimi, Trustee of the Azimi Family Trust Dated October 21, 2021, as to 55.25% Interest and Boris A. Chechelnitsky and Marina S. Chechelnitsky, Trustees of the Boris A. Chechelnitsky and Marina S. Chechelnitsky Revocable Living Trust Dated January 8, 2016, as to 44.75% Interest, as Tenants in Common ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 425 Osprey Drive, Patterson, California (the "Property"). The Property is also encumbered by a senior deed of trust held by Guild Mortgage Company ("Guild").

Movant has provided the Declaration of Chris Boulter, president and owner of Val-Chris Investments, Inc., authorized loan servicer for Movant, to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property. Movant states that there are six pre-petition payments in default totaling \$12,660.96 and two post-petition payments in default totaling \$4,220.32.

The Chapter 13 Trustee filed a response stating that Debtor's plan provides for Val-Chris Investments as a Class 1 claim. The Trustee states that the post-petition mortgage claim of Val-Chris Investments is currently in arrears by two post-petition mortgage payments, and that the Debtor has not paid any plan payments to date.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$367,551.69 (which includes \$114,506.86 secured by Guild and \$40,000 in estimated costs of sale) as stated in Movant's motion. The value of the Property is determined to be \$500,000.00 as stated in Schedules A/B and D filed by Debtor.

Discussion

In a motion brought under § 362(d)(1), the party seeking relief bears the burden on the issue of the debtor's equity - or lack thereof - in property. 11 U.S.C. § 362(g)(1). Creditor has not met this burden.

Creditor's moving papers list the Property's value at \$500,000.00. This is consistent with the valuation listed in Debtor's Schedule A/B and D. See dkt. 15.

Schedules are filed under penalty of perjury. See Fed. R. Bankr. P. 1008. Some courts treat schedules as evidentiary admissions under Federal Rule of Evidence 801(d)(2). *Heath v. American Express Travel Related Services Co., Inc. (In re Heath)*, 331 B.R. 424, 431 (9th Cir. BAP 2005). Others treat them as judicial admissions. *In re Roots Rents, Inc.*, 420 B.R. 28, 40 (Bankr. D. Utah). Whatever their status, schedules carry evidentiary weight. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969-70 (9th Cir. 2012). Therefore, for purposes of this motion only, the court relies on Schedule A/B as the only evidence of the Property's value and values the Property at \$500,000.00.

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Creditor claims it is owed \$213,506.86 and that the total of all liens is \$367,551.69. Based on the Property's \$500,000.00 value and utilizing the lien total of \$367,551.69, that leaves equity of \$132,448.31, which in turn creates an equity cushion of 26.489%. Creditor is therefore adequately protected, even in the absence of post-petition payments.

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

The court will issue an order.

3. [23-90616](#)-B-13 DAVID MARTINEZ
[LGT-1](#) Thomas A. Moore

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
2-28-24 [[42](#)]

Final Ruling

The *initial* Chapter 13 Plan filed December 28, 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 26, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Debtor has failed to provide the Chapter 13 Trustee with business documents including six months of profit and loss statements and copies of Debtor's liability riders and workers' compensation riders, if applicable, for Debtor's business. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These were required 7 days before the date set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).

Second, Debtor failed to provide Trustee with complete copies of Debtor's 2022 federal and state income tax returns. Without these documents, it cannot be determined whether Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. § 1325(a)(6) and 11 U.S.C. § 1325(b)(1).

Third, Debtor's plan is not feasible. Debtor's plan provides for attorney fees in the amount of \$5,875.00 to be paid at a monthly dividend of \$300.00. Pursuant to Local Bankruptcy Rule 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. Trustee estimates a monthly dividend of \$97.92 is necessary to pay the claim in full within Debtor's 60-month plan term.

Fourth, Debtor's plan fails the liquidation test of 11 U.S.C. § 1325(a)(4). Debtor's schedules list non-exempt assets totaling \$149,850.05 and unsecured priority claims totaling \$5,541.09. Accordingly, there are non-exempt assets available for distribution to Debtor's general unsecured creditors of \$144,308.96. Based on a review and analysis of Debtor's schedules, Debtor has non-priority general unsecured claims totaling \$7,571.00. In order to meet the liquidation test of 11 U.S.C. §1325(a)(4), Debtor's plan must pay 100% plus federal judgement rate of 4.88% to Debtor's general unsecured claims. Debtor's plan provides for 100% dividend to general unsecured creditors without the federal judgement rate. Accordingly, Debtor's plan fails the liquidation test.

Fifth, Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 3.07 of Debtor's plan provides for monthly contract installment payments of \$1,302.51 to be paid as a Class 1 on-going mortgage paid through the plan to Guild Mortgage. Section 7 Non-Standard Provisions also lists a mortgage payment of \$1,302.51 to be paid directly to Guild Mortgage by Debtor. Without clarification, it cannot be determined whether the classification of Guild Mortgage is correct and whether Debtor's plan is feasible or pays all income into the plan.

Sixth, Section 3.07 of Debtor's plan provides for monthly contract installment payments of \$1,302.51 to be paid as a Class 1 on-going mortgage paid through the plan to Ken Alvin. Section 7 Non-Standard Provisions also lists a payment of \$1,302.51 to be paid directly to Ken Alvin by Debtor. Without clarification, it cannot be determined if the classification of Ken Alvin is correct and whether Debtor's plan is feasible or pays all income into the plan.

Seventh, The Attachment to Schedule I, which provides for Debtor's business income and expenses, needs to be filed. Without this document, it cannot be determined whether Debtor's plan is feasible and pays all projected disposable income for the applicable

commitment period to Debtor's general unsecured creditors.

Eighth, all of Debtor's personal and business bank statements for the 6 months preceding the filing of this case must be provided to the Trustee. Without this information, it cannot be determined whether the plan is feasible.

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 22, 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 26, 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 26, 2024, at 1:00 p.m.

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

The court will issue an order.

4. [23-90618](#)-B-13 JAMEY/MICHELLE FOSS
[LGT-1](#) Simran Singh Hundal

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
2-23-24 [[12](#)]

Final Ruling

The *initial* Chapter 13 Plan filed December 28, 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 26, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

Debtors cannot make the payments under the plan or comply with the plan pursuant to 11 U.S.C. § 1325(a)(6). Schedule I identifies Debtor Jamey Luis Foss as employed at Trademango Solutions, Inc., making gross wages of \$9,833.35 and net wages of \$6,482.54. However, Debtor admitted at the meeting of creditors held on February 21, 2024, that he is no longer employed and is currently seeking employment.

The plan filed December 28, 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 22, 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 Debtors, the Debtors' 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 26, 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 26, 2024, at 1:00 p.m.

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

The court will issue an order.