

**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 21, 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
Sacramento, California

March 21, 2023 at 1:00 p.m.

-
1. [22-23005](#)-B-13 TERRY FASY MOTION TO VALUE COLLATERAL OF
[PGM](#)-4 Peter G. Macaluso CALIFORNIA EMPLOYMENT
DEVELOPMENT DEPARTMENT
2-17-23 [[60](#)]

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 California Employment Development Department at \$38,550.00.

Debtor moves to value the claim of California Employment Development Department ("Creditor"). Debtor is the owner of a various personal property consisting of household goods, electronics, clothes, costume jewelry, solar panels, cash, checking accounts, Terry's Green Power Construction, refund due from Loan Mod, and miscellaneous personal tools (collectively "Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of \$38,550.00 as of the petition filing date. Debtor states that Creditor also has a lien on his residence but that there is no equity given that residence is over encumbered by a first deed of trust; the net equity is -\$83,356.01. Debtor separately states that he is financing a Tesla and owes more than it is worth since it is valued at \$52,000.00 but Debtor owes \$62,573.73. As the owner, Debtor's opinion of value is evidence of the asset's value. 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. 4-1 filed by Employment Development Department is the claim which may be the subject of the present motion.

Discussion

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. See 11 U.S.C. § 1325(a).

The total dollar amount of the obligation represented by Creditor is \$255,237.43 as

March 21, 2023 at 1:00 p.m.

Page 1 of 7

stated in Claim No. 4-1. Debtor asserts that the price a retail merchant would charge for his Personal Property is \$38,550.00 based on his personal knowledge. Therefore, the Creditor's claim secured by Personal Property is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$38,550.00. 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.

2. [23-20042](#)-B-13 GARY FRAZIER MOTION TO CONFIRM PLAN
 [GW-1](#) Geoff E. Wiggs 2-3-23 [[21](#)]

Final Ruling

The Debtor having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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

3. [19-26960](#)-B-13 FRANCISCO FRANCO
[PLG](#)-6 Steven A. Alpert

MOTION TO MODIFY PLAN
2-9-23 [[110](#)]

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). 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 requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. 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 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.

4. [23-20075](#)-B-13 LARRY/ROCHELLE LACOMBA OBJECTION TO CONFIRMATION OF
[RDW](#)-1 Gabriel E. Liberman PLAN BY LUSO-AMERICAN FINANCIAL
3-1-23 [[26](#)]

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 decision is to sustain the objection and deny confirmation of the plan.

First, the plan provides that the Debtors will sell real property located at 1248 Harriet Avenue, Campbell, California, in order to pay off creditor Luso-American Financial's claim in full. Creditor's loan matured pre-petition on May 1, 2022, and Debtors have not provided any additional information on the proposed sale or when the sale may take place, if at all. Pursuant to the terms of the proposed plan, Creditor cannot be assured of receiving payment due to the speculative sale of real property.

Second, the court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., March 17, 2023, http://online.wsj.com/mdc/public/page/mdc_bonds.html. The current prime rate is 7.75%. To set the appropriate rate, courts utilize the "formula approach" of *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004), which takes into consideration the national prime rate and adjusts it for a greater risk of default posed by a debtor. Courts have typically adjusted the interest rate by 1% to 3%. The court finds Debtors' proposed interest rate of 5.5%, which is lower than the current prime rate, to be inappropriate.

The plan filed February 7, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

5. [22-23376](#)-B-13 ANTOINETTE GRAY-WRIGHT OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Pro Se PLAN BY RUSSELL D. GREER
2-27-23 [[22](#)]

Final Ruling

The case having been dismissed on March 9, 2023, the objection to confirmation is overruled as moot.

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

The court will issue an order.

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 decision is to sustain the objection and deny confirmation of the plan.

First, Debtors' Disclosure of Compensation of Attorney for Debtors (Form 2030) at Line 6 states that the agreed upon fee of \$4,000.00 does not include judicial lien avoidances and relief from stay actions. This is contradictory to the Rights and Responsibilities signed by Debtors and their attorney. This also violates Local Bankruptcy Rule 2017-1(a)(1). These services are included in the "No Look Fee," are required in the course of representing a debtor in this district, and should not be excluded.

Second, the Debtors have failed to provide the Trustee with Business Documents including 6 months of profit and loss statements and a copy of liability riders and workers' compensation riders, if applicable, for Debtors' businesses. 11 U.S.C. §521(e)(2)(A); FRBP 4002(b)(3). This is required 7 days before the date set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).

Third, the plan is not feasible under 11 U.S.C. § 1325(a)(6). The attachment to Schedule I, which provides for Debtors' business income and expenses, needs to be filed. Without this document, it cannot be determined whether Debtors' plan is feasible and pays all projected disposable income for the applicable commitment period to general unsecured creditors.

Fourth, the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtors' Statement of Financial Affairs at #4 fails to list Co-Debtor's gross income for the last calendar year.

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

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

The court will issue an order.