

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

March 22, 2022 at 1:00 p.m.

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1. [21-22719](#)-B-13 ANTHONY MONTOYA MOTION TO CONFIRM PLAN
[NAR-2](#) Charles L. Hastings 2-11-22 [[57](#)]

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 second amended plan.

The Trustee objects to confirmation of the plan as it is speculative. The Debtor has submitted a filed declaration from Steve Campbell, a friend willing to provide a private, "hard money loan to [Debtor], as the administrator and on behalf of the Estate of Cheryl Flores, in the amount of up to \$100,000.00, as determined at the time of the refinance, in order to refinance the current mortgage and to pay necessary administrative expenses." Dkt. 58. Trustee's objection is based on the fact that this hard money loan is contingent upon Debtor being appointed as administrator of the Estate of Cheryl Flores and is intended to assist Debtor's refinance application. Debtor testified at the 341 Meeting of Creditors that the probate of the Estate of Cheryl Flores is currently being contested by other family members and that he has been engaged in this probate dispute since 2019.

Trustee has requested that Debtor file a declaration after the February 28, 2022 probate court hearing, providing information regarding the status of his appointment as administrator of the estate in the probate case and the status of a pending refinance application. Debtor has filed a response indicating that the February 28, 2022 hearing was continued based on procedural deficiencies that the Debtor's probate attorney was unable to cure prior to the hearing. Debtor's probate attorney is attempting to have Debtor appointed on an expedited basis, by filing an ex parte application to have him appointed as the special administrator in short order, and prior to the hearing on the Appointment of Personal Representative. This matter has been continued to July 6, 2022. Debtor would need to seek approval to incur the debt referenced in the plan to refinance the current mortgage, however the debt would be that of the Estate of Cheryl Flores, not Debtor's personal debt.

Trustee objects to continuing the motion to after July 6, 2022 on two grounds. First, the nonstandard provision of Debtor's second amended plan remains speculative, as shown by the probate court's continuance of Debtor's motion from February 28, 2022 to July 6, 2022. It is still uncertain whether Debtor will be appointed as administrator of the Estate of Cheryl Flores, and Debtor's ability to obtain refinancing or a gift from the estate to pay off Debtor's Chapter 13 plan is thus, also uncertain. This uncertainty makes the plan not feasible. Second, the proposed plan term of the second amended plan

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is only for 12 months, and as Debtor filed this bankruptcy case in July 2021, the 12th month is July 2022. As such, it is highly unlikely that the plan will be paid off and completed on or before July 2022.

Independently, in this court's view, allowing a chapter 13 case to languish for one year without a confirmed chapter 13 plan is delay that is prejudicial to creditors. And here that delay is caused by the Debtor.

The amended plan 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.

2. [21-23825](#)-B-13 ANGELINA/MIGUEL PEINADO MOTION TO CONFIRM PLAN
[MMN](#)-1 Michael M. Noble 1-14-22 [[44](#)]

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, the feasibility of Debtors' plan is contingent upon a loan modification with Creditor Deutsche Bank ("Creditor"). Debtors' plan provides for Deutsche Bank as a Class 2 claim in the amount of \$335,000.00 to be paid at 0.00% interest pursuant to the terms of Section 7 of the plan, which states that Debtors will "satisfy the entire delinquency in full when the loan modification is approved." Debtors' plan does not provide a date certain nor sum certain to be paid into the plan from the pending loan modification, and without this information it cannot be determined if Debtors' plan is feasible. Debtors filed a response indicating they will file a motion to approve the loan modification if the modification is approved by Creditor. Creditor subsequently filed a response indicating that Debtors were offered a trial loan modification offer providing for a down payment and six monthly payments, which the Debtors appealed and subsequently rejected. Debtors subsequently filed a loan modification request containing incorrect information which was denied by Creditor. Creditor further asserts that should Debtors submit any future applications, the offer they receive will be similar to the prior trial loan modification given the amount of debt at issue and the April 1, 2022 maturity date.

Second, Debtors' have not filed a pending motion to incur debt, nor is there any evidence of an order granting a motion to incur debt in Debtors' case. Until the Court has entered an order granting the motion to incur debt, Debtors' plan is not feasible and is not proposed in good faith. 11 U.S.C. § 1325(a)(3).

Third, the Debtors' plan provides for a 100% dividend to general unsecured creditors in the approximate amount of \$0.00. Creditor US Department of Education has filed a proof of claim with an unsecured portion of \$24,515.00. This claim has not been provided for in Debtors' plan.

Fourth, the Debtors' plan does not pass the liquidation test of 11 U.S.C. § 1325(a)(4). Debtor's schedules list non-exempt assets totaling \$83,678.00, and unsecured priority claims totaling \$0.00. Accordingly, there are non-exempt assets available for distribution to Debtors' general unsecured creditors of \$83,678.00. Trustee estimates that Debtors have non-priority general unsecured claims totaling \$24,515.00. In order to meet the liquidation test of 11 U.S.C. § 1325(a)(4), Debtors' plan must pay 100% to Debtors' general unsecured creditors, plus Federal Judgment Rate of 0.15% to Debtors' general unsecured creditors. Debtors' plan only pays 100%, and accordingly, it fails the liquidation test of 11 U.S.C. § 1325(a)(4).

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)(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.

First, the Debtor has failed to provide evidence that the plan is mathematically feasible. The plan provides a monthly payment of \$625.00 to general unsecured creditors. Based on the claims that have been filed to date, and the Debtor's previous Motion to Value Collateral determining the collateral's value to be \$3,100.00, the Debtor's monthly plan payment will need to be at least \$1,370.00 in order for the plan to be feasible as proposed paying unsecured creditors 100%, plus interest at the Federal Judgment Rate of 1.86%, the amount needed to pass the liquidation test. 11 U.S.C. § 1325(a)(6).

Second, the Debtor's plan may not be feasible. Debtor's ability to make the plan payment of \$625.00 is contingent upon a monthly contribution of \$800.00 from a son, listed on Debtor's Schedule I. As of March 8, 2022, the Debtor has failed to file a declaration from his son stating the ability and willingness to financially assist Debtor.

Third, feasibility of Debtor's plan is contingent on the court approving a permanent loan modification. Creditor Wells Fargo Bank NA ("Creditor") filed opposition to this motion indicating the terms of the loan modification agreement were not final. Debtor has filed a response indicating that Creditor has been approved for a loan modification contingent upon completion of a trial period, however until the court enters orders on that motion, it cannot be determined whether Debtor's plan is feasible.

Fourth, the Debtor's plan does not pass the liquidation test of 11 U.S.C. § 1325(a)(4). Debtor's schedules list non-exempt assets totaling \$85,753.94, and unsecured priority claims totaling \$0.00. Accordingly, there are non-exempt assets available for distribution to Debtor's general unsecured creditors of \$85,753.94. Trustee estimates that Debtor has non-priority general unsecured claims totaling \$28,269.44. In order to meet the liquidation test of 11 U.S.C. § 1325(a)(4), Debtor's plan must pay 100% to Debtor's general unsecured creditors, plus interest at the Federal Judgment Rate of 1.86%, since the value of the non-exempt assets exceeds the amount of the general unsecured claims. Debtor's plan proposed 100% plus interest, but fails to specify the percentage, and accordingly, it fails the liquidation test of 11 U.S.C. § 1325(a)(4).

Fifth, the Debtor's plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtor's plan provides for a plan payment of \$625.00, which through February 2022 would total \$18,125.00. Trustee records indicate Debtor has paid a total of \$27,080.09. Accordingly, Debtor's plan incorrectly accounts for payments already made to Trustee.

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.

4. [21-23729](#)-B-13 EDUARDO RAMOS MOTION TO CONFIRM PLAN
[LTF](#)-1 Lars T. Fuller 1-31-22 [[33](#)]

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.

5. [21-23844](#)-B-13 MARITA GALIZA
[ES-1](#) Eric L. Seyvertsen

MOTION TO CONFIRM PLAN
2-16-22 [[32](#)]

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.

6. [18-20247](#)-B-13 BRIDGET DIAZ
[RDG](#)-1 Grace S. Johnson

OBJECTION TO CLAIM OF EXETER
FINANCE LLC, CLAIM NUMBER 12
2-10-22 [[71](#)]

Final Ruling

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, parties in interest were not required to file a written response or opposition. Nevertheless, for the reasons stated below, relief cannot be granted so further briefing is not necessary.

The court has reviewed the objection, response, and all related documents. The court has also reviewed and takes judicial notice of the docket and claims register. See Fed. R. Evid. 201(c)(1). The court has determined that the objection may be resolved without oral argument which will not assist in the decision-making process. See Local Bankr. R. 1001-1(f), 9014-1(h).

The court's decision is to sustain the objection.

The Chapter 13 Trustee ("Trustee") objects to Claim 17-2 filed by Exeter Finance, LLC ("Creditor"). The claim is an amended proof of claim for a car loan deficiency in the amount of \$11,399.25. Debtor Bridget Ann Diaz ("Debtor") is listed as the co-buyer on the car loan.

The Debtor's first modified chapter 13 plan filed on June 8, 2021, and confirmed on August 11, 2021, classifies Creditor's claim as a Class 4 secured claim. Class 4 claims are paid directly by the debtor or a third-party. In this case, the modified plan provides for payments on the car loan by the Debtor's daughter.

Exeter asserts that the Debtor must now pay the unsecured car loan deficiency under the modified plan as a Class 7 unsecured claim. The Trustee contends otherwise. The court agrees with the Trustee.

Exeter relies on § 3.11(c) of the Eastern District of California mandatory form chapter 13 plan. Exeter asserts that § 3.11(c) applies to Class 4 claims because Class 4 claims are not expressly excluded. Exeter is wrong.

By its plain terms § 3.11(c) - and thence entitlement to a Class 7 unsecured deficiency claim - applies only to claims for which the court terminates the automatic stay "**after** confirmation of the plan." The automatic stay is not terminated "after confirmation of the plan" for Class 4 claims. Rather, for Class 4 claims the automatic stay (and the co-debtor stay) are modified by § 3.11(a)(2) "**[u]pon** confirmation of the plan[.]" Upon is not after- it is at or concurrent with.

By limiting Class 7 deficiency claims to those claims for which the automatic stay is terminated "after confirmation," § 3.11(c) necessary excludes Class 4 claims on which the automatic stay is modified "upon confirmation" by § 3.11(a)(2).

The Trustee's objection to Claim 17-2 is ORDERED SUSTAINED. The claim asserted in Claim 17-2 is disallowed in its entirety.

The court will issue an order.

7. [21-22666](#)-B-13 MELISSA BELONG MOTION TO CONFIRM PLAN
[RKW](#)-1 Richard Kwun 1-31-22 [[76](#)]
Thru #8

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 confirm the second amended plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that the feasibility of Debtor's plan is contingent upon the court sustaining Debtor's Objection to the Claim of Synchrony Bank. The court has sustained Debtor's Objection to the Claim of Synchrony Bank at Item #8, RKW-2. Accordingly, Trustee's grounds for objecting to confirmation have been resolved and this objection will be overruled.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, 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.

8. [21-22666](#)-B-13 MELISSA BELONG OBJECTION TO CLAIM OF SYNCHRONY
[RKW](#)-2 Richard Kwun BANK, CLAIM NUMBER 16
1-31-22 [[71](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant 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 in part and overrule in part the objection to Claim No. 16 of Synchrony Bank and disallow the claim in its entirety.

The Debtor requests that the court disallow the claim of Synchrony Bank ("Creditor"), Claim No. 16. The claim is asserted be unsecured in the amount of \$19,701.32. The Debtor asserts that the claim should be disallowed because it is incomplete and does not include supporting documentation for the basis of its claim, and incorrectly classifies the claim as unsecured when it is actually secured. Debtor states that Creditor does not have an unsecured claim but rather a secured claim as to the Vehicle but may have an unsecured claim for any deficiency balance after auction of the

Vehicle. Debtor further asserts that Creditor has not repossessed the Vehicle despite repeated requests from Debtor to retrieve the Vehicle. Creditor has not produced any evidence that the Vehicle was sold, thereby supporting a claim for a deficiency balance from a secured loan.

Debtor states that she entered into a purchase money secured loan agreement with regard to a 2020 Kawasaki Teryx 4 utility task vehicle ("Vehicle"), with account number ending in -8144. Synchrony Bank has filed Claim No. 16-1 in support of that secured claim.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the Debtor has satisfied its burden of overcoming the presumptive validity of the claim. Based on the evidence before the court, the Creditor's claim is disallowed as an unsecured claim in its entirety but allowed as a secured claim in the amount filed. The objection to the proof of claim is sustained in part and overruled in part.

The objection is ORDERED SUSTAINED IN PART AND OVERRULED IN PART for reasons stated in the minutes.

The court will issue an order.

9. [21-23996](#)-B-13 SANDRA DAVIS
[GT-1](#) Eric John Schwab

MOTION FOR EXAMINATION AND FOR
PRODUCTION OF DOCUMENTS
3-4-22 [[24](#)]

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, and may appear at the hearing to offer oral argument.

The court's decision is to conditionally grant the motion in part and deny the motion in part and **continue the motion to March 29, 2022 at 1:00 p.m.**

Creditors Jeffrey Bleecker, as Trustee for the Bleecker Family Trust, Lance Evic, and Lisa Motes ("Lenders") seek to compel Debtor to produce documents for inspection and copying on April 22, 2022 at 10:00 a.m. at the offices of Greenberg Traurig, LLP, 1840 Century Park East, Suite 1900, Los Angeles, California 90067, and to appear for and submit to oral examination, under oath, commencing on May 10, 2022 at 10:00 a.m. via Zoom on a conference line to be provided by Greenberg Traurig, LLP, and continuing from day-to-day thereafter until the completion of the examination. The discovery included 38 separate document production requests.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, March 25, 2022, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or 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 29, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on March 29, 2022, at 1:00 p.m.