

**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: April 2, 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

April 2, 2024 at 1:00 p.m.

1. [21-20402](#)-B-13 ALFONSO PULIDO MOTION TO MODIFY PLAN
 [PGM](#)-8 Peter G. Macaluso 2-24-24 [[136](#)]

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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

2. [23-22416](#)-B-13 THOMAS ANDERSON OBJECTION TO CONFIRMATION OF
[GAL](#)-1 Leo G Spanos PLAN BY TWIN CREEKS ESTATES
Thru #3 OWNERS ASSOCIATION
3-13-24 [[45](#)]

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). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of Twin Creeks Estates Owners Association's objection, the Debtor filed an amended plan on March 27, 2024. The confirmation hearing for the amended plan is scheduled for May 7, 2024. The earlier plan filed February 8, 2024, is not confirmed.

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

The court will issue an order.

3. [23-22416](#)-B-13 THOMAS ANDERSON OBJECTION TO CONFIRMATION OF
[LGT](#)-1 Leo G Spanos PLAN BY LILIAN G. TSANG
3-13-24 [[51](#)]

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). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Chapter 13 Trustee's objection, the Debtor filed an amended plan on March 27, 2024. The confirmation hearing for the amended plan is scheduled for May 7, 2024. The earlier plan filed February 8, 2024, is not confirmed.

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

The court will issue an order.

4. [24-20216](#)-B-13 JOSEPH POTPROCKY
[LGT-1](#) Colby D. LaVelle

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
3-13-24 [[16](#)]

Final Ruling

The *initial* Chapter 13 Plan filed January 19, 2024, 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 April 9, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Debtor has failed to file the most recent version of Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, EDC 3-096 (Rev. 8/29/2023). Separately, pursuant to Local Bankruptcy Rule 2016-1(c)(4)(B), the attorney payment flat fees must be paid in equal monthly installments over the term of the plan. Debtor's plan is a 60-month plan and provides for attorney fees in the amount of \$3,300.00 to be paid at a monthly dividend of \$700.00. The Chapter 13 Trustee estimates a monthly dividend of \$55.00 is necessary to pay the claim in full within the plan term.

Second, Debtor has failed to provide the Trustee with business documents including six months of profit and loss statements, business tax returns, 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); FRBP 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).

Third, 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 general unsecured creditors.

Fourth, Section 2.01 of Debtor's plan provides for plan payments of \$835.00 for 60 months. Debtor has failed to provide admissible evidence that his plan is mathematically feasible. Debtor's plan payment will need to be at least \$845.00 in order for Debtor's plan to be feasible under 11 U.S.C. § 1325(a)(6).

Fifth, Debtor's plan provides for total unsecured priority claims in the amount of \$0.00. Per Debtor's 2022 tax returns, Debtor owed \$214,419.00 to Internal Revenue Service and \$60,199.00 to Franchise Tax Board. Debtor stated he was unaware he owed this amount. Debtor's plan payment is insufficient to pay these amounts. Without clarification, it cannot be determined whether Debtor's plan is feasible under 11 U.S.C. § 1325(a)(6).

Sixth, without copies of Debtor's personal and business bank statements, it cannot be determined whether the plan is feasible under 11 U.S.C. § 1325(a)(6).

Seventh, based on Debtor's non-exempt assets totaling \$126,373.00 and scheduled non-priority general unsecured claims totaling \$42,564.00, Debtor's plan must pay 100% plus federal judgement rate of 4.77% to Debtor's general unsecured claims.

Eighth, Debtor's Schedule J includes a car payment of \$809.00. Debtor's plan provides for this as a Class 4 vehicle payment. Debtor has testified at his meeting of creditors that the payment is for a 2023 Model Y Tesla driven by his girlfriend. Debtor's girlfriend is employed and lives with Debtor, and the vehicle is used solely by the girlfriend. Clarification is needed as to the contributions made by the girlfriend to household income and expenses, since Schedules I and J are silent to this. Without clarification, Debtor's plan is not proposed in good faith. 11 U.S.C. § 1325(a)(3).

The plan filed January 19, 2024, 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 April 5, 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 April 9, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on April 9, 2024, at 1:00 p.m.

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

The court will issue an order.

5. [24-20117](#)-B-13 VENUS SANDOVAL OBJECTION TO CONFIRMATION OF
[LGT-1](#) Flor De Maria A. Tataje PLAN BY LILIAN G. TSANG
Thru #6 3-12-24 [[20](#)]

Final Ruling

The *initial* Chapter 13 Plan filed January 11, 2024, 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 April 9, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Debtor's plan provides for attorney fees of \$7,400.00, of which \$1,813.00 was paid prior to filing with a balance of \$5,587.00 to be paid through the plan at \$93.00 a month. The plan fails to comply with Local Bankruptcy Rule 2016-1(c)(4)(B), which provides for payments by the Chapter 13 Trustee to Debtor's counsel in equal monthly installments over the term of the most recently confirmed Chapter 13 plan, a sum equal to the flat fee less any retainer received. In order to pay the balance within 60 months, Debtor's attorney fees would need a monthly dividend of \$93.12. Separately, Debtor has not filed the most recent version of the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, EDC 3-096 (Rev. 8/29/2023).

Second, 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 \$255.30 for 60 months, which would result in a 30% dividend to the general unsecured creditors. However, Debtors' plan provides for only 10% 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.

Third, Debtor's plan may not be proposed in good faith. Debtor's petition fails to list her prior Chapter 7 case filing, case no. 18-24982, filed on August 8, 2018, and discharged on December 10, 2018. 11 U.S.C. § 1325(a)(3).

Fourth, Debtor has listed her Fidelity 403b and Group Term Life Insurance policy on Schedule C, and exempted them at 100% of fair market value, up to any applicable statutory limit. Schedule C should be amended to properly exempt these assets. 11 U.S.C. § 1325(a)(3).

Fifth, Schedule I lists net income from operating a business in the amount of \$469.29. Debtor has failed to file the required attachment to Schedule I listing the gross income and expenses. 11 U.S.C. § 1325(a)(3).

Sixth, Section 4.02 of Debtor's plan fails to list Debtor's residential lease agreement, and therefore, Debtor's plan proposes to reject her lease. Debtor testified at her meeting of creditors that she does have a residential lease contract and that she was not certain of the lease duration since the management company changed recently. 11 U.S.C. § 1325(a)(3).

Seventh, Section 2.01 of Debtor's plan proposes a monthly payment of \$1,079.00 for 60 months and a dividend of 10% to the general unsecured creditors. However, Debtor's plan payment would need to be at least \$1,275.00 per month in order for the plan to be feasible and pay a 30% dividend to the general unsecured creditors. 11 U.S.C. § 1325(a)(6).

The plan filed January 11, 2024, 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 April 5,

**April 2, 2024 at 1:00 p.m.
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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 April 9, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on April 9, 2024, at 1:00 p.m.

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

The court will issue an order.

6. [24-20117](#)-B-13 VENUS SANDOVAL OBJECTION TO CONFIRMATION OF
[SKI-1](#) Flor De Maria A. Tataje PLAN BY CARMAX BUSINESS
SERVICES, LLC
2-28-24 [[15](#)]

Final Ruling

The *initial* Chapter 13 Plan filed January 11, 2024, 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 sustain in part the objection to confirmation.

Carmax ("Creditor") objects to confirmation on grounds that the plan does not provide for an appropriate interest rate on its secured claim. The plan provides for an interest rate of 6.5%. Creditor instead asserts that it should be provided at least a 10.5% interest rate given that the national prime rate is 8.50% plus adjustment of 2.0% for Debtor's high risk of default given her tight budget and the 2011 Infiniti M37's depreciating value.

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 29, 2024, http://online.wsj.com/mdc/public/page/mdc_bonds.html. The current prime rate is 8.50%. To set the appropriate rate, courts utilizes 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 that an interest rate of 9.50% to be appropriate. If either party disputes the interest rate, it may request an evidentiary hearing in either the subsequent motion to confirm or any opposition/objection thereto. The request shall appear in the caption of the document in which it is made. If an evidentiary hearing is requested, the document(s) shall also identify the interest rate expert(s). The court may also appoint its own interest rate expert, Fed. R. Evid. 706(a), and if it does it may allocate the expert's compensation among the parties as appropriate. Fed. R. Evid. 706(c). All parties, attorneys, and witnesses will be required to appear in person for the evidentiary hearing. Telephonic and/or video appearances will not be permitted.

The objection is sustained in part. An appropriate interest rate for Creditor's secured claim is 9.50%.

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

The court will issue an order.

7. [22-20618](#)-B-13 JAVIER VALENCIA DIAZ
[SKI-1](#) Gregory J. Smith

MOTION TO RESTORE MOTION FOR
RELIEF FROM STAY AND CO-DEBTOR
STAY
2-21-24 [[48](#)]

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 restore the motion and to grant the motion for relief from automatic stay.

Americredit Financial Services, Inc. dba GM Financial ("Movant") seeks to restore its motion to the court's calendar so that it may obtain an order granting relief from the automatic stay under 11 U.S.C. § 362(d)(1). Movant and debtor Javier V. Diaz ("Debtor") had entered into a stipulation on August 15, 2023, whereby Debtor was permitted to cure his post-petition default by making monthly payments and staying current on regular monthly payments. The stipulation allowed Movant to reset its motion in the event that Debtor defaulted under the terms of the stipulation by failing to make payments.

As of February 2024, the account was in default in the amount of \$2,806.24.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The request for relief from stay as to any non-filing co-debtor, who is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The motion for relief from automatic stay is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

8. [23-22920](#)-B-13 MARK JOHNSON CONTINUED MOTION TO CONFIRM
[EJS-1](#) Eric John Schwab PLAN
Thru #9 12-14-23 [[50](#)]

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.

Feasibility depends on the granting of a motion to value collateral of Select Portfolio Servicing, Inc. That motion was denied without prejudice at Item #9, EJS-3.

The issue regarding tax returns has been resolved. The Debtor has sent both 2021 and 2022 federal and state tax returns to the Chapter 13 Trustee's office for review.

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.

9. [23-22920](#)-B-13 MARK JOHNSON MOTION TO VALUE COLLATERAL OF
[EJS-3](#) Eric John Schwab SELECT PORTFOLIO SERVICING INC.
2-22-24 [[73](#)]

Final Ruling

The motion was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). This is the second attempt by debtor Mark Johnson ("Debtor") to properly serve a motion to value collateral of Select Portfolio Servicing Inc. However, the Debtor has not corrected the service address deemed problematic by the court. See dkt. 70.

Debtor continues to utilize the General Correspondence mailing address from www.spsservicing.com to serve his documents. The address does not appear to be the headquarters, principal address, or that of an agent for service, such as those listed on the California Secretary of State website or Better Business Bureau website. Therefore, the court's decision is to deny the motion without prejudice.

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

The court will issue an order.

10. [23-24327](#)-B-13 LUIS IBARRA MOTION TO CONFIRM PLAN
[HWW](#)-2 Hank W. Walth 2-23-24 [[36](#)]
Thru #13

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 will address the merits of the motion at the hearing.]

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 plan.

First, Debtor testified at his meeting of creditors held on January 24, 2024, that he had not filed his 2022 income tax returns. Until Debtor files those returns and the Chapter 13 Trustee is able to review those returns, it cannot be determined whether Debtor's plan is feasible. 11 U.S.C. § 1325(a)(6).

Second, Debtor's plan misclassifies Capital One Auto Finance as a Class 4 creditor rather than Class 2. Capital One Auto Finance filed a proof of claim indicating a maturity date of June 27, 2028, month 54 of Debtor's 60-month plan. Class 4 claims mature after the completion of the plan. The correct classification for the creditor's claim should be Class 2 as a secured claim that will mature before the plan is completed. With the misclassification of the creditor, Debtor's 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.

11. [23-24327](#)-B-13 LUIS IBARRA MOTION TO AVOID LIEN OF BANK OF
[HWW](#)-3 Hank W. Walth AMERICA, N.A.
3-18-24 [[56](#)]

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 **conditionally grant the motion to avoid lien and continue the matter to April 9, 2024.**

This is a request for an order avoiding the judicial lien of Bank of America, N.A. ("Creditor") against the Debtor's property commonly known as 1214 Dover Lane, Tracy, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$14,088.51. An abstract of judgment was recorded with San Joaquin County on September 12, 2017, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$640,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00 on Schedule C. A senior deed of trust against the Property totals \$534,339.10.

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).

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, April 5, 2024, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(c). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted 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 April 9, 2024, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on April 9, 2024, at 1:00 p.m.

12. [23-24327](#)-B-13 LUIS IBARRA MOTION TO AVOID LIEN OF MIDLAND
[HWW](#)-4 Hank W. Walth FUNDING LLC
3-18-24 [[61](#)]

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 **conditionally grant the motion to avoid lien and continue the matter to April 9, 2024.**

This is a request for an order avoiding the judicial lien of Midland Funding LLC ("Creditor") against the Debtor's property commonly known as 1214 Dover Lane, Tracy, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$7,039.15. An abstract of judgment was recorded with San Joaquin County on January 11, 2018, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$640,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00 on Schedule C. A senior deed of trust against the Property totals \$534,339.10.

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).

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f) (2), any party in interest shall have until 5:00 p.m. on Friday, April 5, 2024, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f) (2) (c). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted 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 April 9, 2024, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on April 9, 2024, at 1:00 p.m.

13. [23-24327](#)-B-13 LUIS IBARRA MOTION TO AVOID LIEN OF CAVALRY
[HWW-5](#) Hank W. Walth SPV I, LLC
3-18-24 [[66](#)]

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 **conditionally grant the motion to avoid lien and continue the matter to April 9, 2024.**

This is a request for an order avoiding the judicial lien of Cavalry SPV I, LLC ("Creditor") against the Debtor's property commonly known as 1214 Dover Lane, Tracy, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$10,736.21. An abstract of judgment was recorded with San Joaquin County on February 26, 2018, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$640,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00 on Schedule C. A senior deed of trust against the Property totals \$534,339.10.

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).

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f) (2), any party in interest shall have until 5:00 p.m. on Friday, April 5, 2024, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f) (2) (c). Any opposition or response shall be served on the Chapter 13 Trustee

and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted 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 April 9, 2024, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on April 9, 2024, at 1:00 p.m.

14. [23-24232](#)-B-13 MARIA CARRANZA
[ES-1](#) Eric L. Seyvertsen

MOTION TO CONFIRM PLAN
2-4-24 [[17](#)]

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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

15. [23-21635](#)-B-13 DEBRA MAGHONEY
[PGM-2](#) Peter G. Macaluso

OBJECTION TO CLAIM OF PORTFOLIO
RECOVERY ASSOCIATES, LLC, CLAIM
NUMBER 1
2-12-24 [[36](#)]

Final Ruling

Before the court is a claim objection filed by Debtor Debra Maghoney ("Debtor"). Debtor objects to the proof of claim, Claim 1, in the amount of \$3,031.24 filed by Portfolio Recovery Associates ("Creditor"). The objection was filed on February 12, 2024, with a hearing date of April 2, 2024. Dkt. 36. Creditor filed an opposition on March 19, 2024. Dkt. 42. Debtor filed a reply on March 26, 2024. Dkt. 47.

The objection was filed, set, and served under Local Bankr. 3007-1(b)(1) which means the evidentiary record closed when the reply was filed. See Local Bankr. R. 3007-1(b)(1)(B). Two days later, however, Creditor filed a "surreponse" to the Debtor's reply. Dkt. 49.

The local rules make no provision for a "surreponse" or other response after the reply is filed and the evidentiary record closes, at least without prior court authorization. See Local Bankr. R. 3007-1(b)(1)(C); see also *Hopper v. Colusa Regional Medical Center (In re Colusa Regional Medical Center)*, 604 B.R. 839, 852 (9th Cir. BAP 2019) (so recognizing under identical Local Bank. R. 9014-1(f)(1)(D)). The "surreponse" was filed without this court's prior approval.

Although the "surreponse" appears to include a correct statement of the law and the court is inclined to adopt it, and so that the Debtor is not prejudiced, the court will allow the Debtor to respond to the "surreponse." Any response by the Debtor shall be limited to the scope of the "surreponse" and shall be filed and served by April 9, 2024. Any response shall also be filed in accordance with Fed. R. Bankr. P. 9011. In other words, there must be a good faith basis for any additional argument and the response must not be filed for an improper purpose. The Debtor and her attorney may be subject to sanction for a response if otherwise.

The hearing on the objection is **CONTINUED** to April 16, 2024, at 1:00 p.m. If the Debtor does not file and serve a timely response, the objection will be overruled and the continued hearing will be vacated.

The court will enter 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 second amended plan.

First, Debtor's plan has not been proposed in good faith. Debtor's plan provides for payment to PHH Mortgage as a Class 1 creditor. However, Debtor claims a monthly mortgage expense of \$2,003.00 on Schedule J. Since the mortgage payment is included in the plan, this expense is inappropriate. Debtor is not paying all available income into the plan and the plan is not proposed in good faith. 11 U.S.C. § 1325(a)(3).

Second, Debtor's plan is not feasible. The plan provides for attorney fees in the amount of \$6,500.00 to be paid at a monthly dividend of \$185.00. 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 36-month plan. Trustee estimates that a monthly dividend of \$180.56 is necessary to pay the claim in full within Debtor's 36-month plan term.

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.

17. [24-20254](#)-B-13 MARLON MAYO OBJECTION TO CONFIRMATION OF
[CAS-1](#) Peter G. Macaluso PLAN BY ALLY BANK
Thru #19 2-28-24 [[17](#)]

Final Ruling

Ally Bank and Debtor entered into a stipulation on March 28, 2024, resolving the issues raised in Ally Bank's objection to confirmation. The objection was withdrawn.

Given the aforementioned, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41((a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

18. [24-20254](#)-B-13 MARLON MAYO OBJECTION TO CONFIRMATION OF
[EAM-1](#) Peter G. Macaluso PLAN BY DPS FINANCE COMPANY
3-13-24 [[27](#)]

Final Ruling

The *initial* Chapter 13 Plan filed January 23, 2024, 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 April 9, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, based on Debtor's non-exempt assets totaling \$10,000.00 and scheduled non-priority general unsecured claims totaling \$3,755.49, the Debtor's plan must pay 100% to general unsecured creditors plus interest at the federal judgment rate fo 4.79% in order to meet the liquidation test of 11 U.S.C. § 1325(a)(4).

Second, the plan classifies DPS Finance Company as a Class 1 creditor. Counsel for the creditor appeared at Debtor's meeting of creditors and stated that the mortgage matured in January 2023. Creditor filed proof of claim 6-1 on March 11, 2024. Accordingly, the creditor is misclassified as a Class 1 in the plan.

The plan filed January 23, 2024, 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 April 5, 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 April 9, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on April 9, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED for reasons stated in the minutes.
The court will issue an order.

19. [24-20254](#)-B-13 MARLON MAYO OBJECTION TO CONFIRMATION OF
[LGT-1](#) Peter G. Macaluso PLAN BY LILIAN G TSANG
3-11-24 [[23](#)]

Final Ruling

The *initial* Chapter 13 Plan filed January 23, 2024, 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 sustain the objection for reasons stated at Item #18, EAM-1, and deny confirmation of the plan.

The plan filed January 23, 2024, 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.

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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

21. [23-21257](#)-B-13 EMILIE BURTON
Richard L. Sturdevant

MOTION FOR COMPENSATION FOR
RICHARD STURDEVANT, DEBTORS
ATTORNEY(S)
3-1-24 [[66](#)]

Final Ruling

Counsel Richard L. Sturdevant failed to use the Official Certificate of Service Form required by Local Bankr. R. 7005-1. This form is mandatory for attorneys and trustees as of November 1, 2022. Accordingly, the application for additional fees and expenses is denied without prejudice.

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

The court will issue an order.

22. [22-21184](#)-B-13 BERTHA VALENTINE
[FI-3](#) Fred A. Ihejirika

MOTION TO MODIFY PLAN
2-27-24 [[69](#)]

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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

23. [23-24398](#)-B-13 RICARDO BENAVIDES
[RB-2](#) Pro Se

MOTION TO CONFIRM PLAN
3-5-24 [[39](#)]

Final Ruling

The motion was not 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). Only 28-days' notice was provided. Therefore, the motion to confirm plan is denied without prejudice.

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

The court will issue an order.

24. [20-21225](#)-B-13 YVONNE LOPEZ
[LGT](#)-1 G. Michael Williams

CONTINUED MOTION TO DISMISS
CASE
3-11-24 [[89](#)]

Final Ruling

This matter was continued from March 26, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 29, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 93, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on April 2, 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.

25. [23-24142](#)-B-13 FRANK CANO
[LGT](#)-2 Mary D. Anderson

CONTINUED MOTION TO DISMISS
CASE
3-7-24 [[36](#)]

Final Ruling

This matter was continued from March 26, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 29, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 40, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on April 2, 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.

26. [23-21890](#)-B-13 ESTHER CHAVEZ
[LGT](#)-3 James D Hornbuckle

CONTINUED MOTION TO DISMISS
CASE
3-7-24 [[73](#)]

Final Ruling

This matter was continued from March 26, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 29, 2024. Debtor filed a timely response and a second amended plan. Debtor further states that she will file a notice of hearing on confirmation once the court releases self-scheduling dates for June 2024. The Debtor states that she will need to file and complete a motion to value real property before the confirmation hearing, thus requiring the June 2024 confirmation hearing date of her second amended plan. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 77 and the continued hearing on April 2, 2024, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

27. [23-24593](#)-B-13 ELISHA MOODY
[LGT](#)-2 Le'Roy Roberson

CONTINUED MOTION TO DISMISS
CASE
3-7-24 [[22](#)]

Final Ruling

This matter was continued from March 26, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 29, 2024. Debtor filed a timely response acknowledging that she is in arrears and requesting that she be given until April 18, 2024, to cure the delinquent plan payments. Debtor states that the purpose of filing for chapter 13 bankruptcy was to save her primary residence where her elderly mother resides with her. Debtor contends that there is significant equity cushion in her primary residence to protect the secured creditor.

Given the aforementioned, the court's conditional ruling at dkt. 31 and the continued hearing on April 2, 2024, at 1:00 p.m. are vacated.

The Chapter 13 Trustee shall file a supplemental response by April 19, 2024, stating whether the Debtor has cured the delinquency in plan payments. If Debtor has failed to come current with plan payments or to file an amended plan, the motion to dismiss case will be granted on the Trustee's ex parte application.

The motion to dismiss case is conditionally denied.

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

The court will issue an order.