

**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: April 6, 2021

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

April 6, 2021 at 1:00 p.m.

| | | |
|-----------------------------------|-------------------|---------------------------------|
| 1. 21-90002 -B-13 | ROGER MANSOUR | CONTINUED OBJECTION TO |
| RDG -1 | David C. Johnston | CONFIRMATION OF PLAN BY RUSSELL |
| | | D. GREER |
| | | 2-22-21 [20] |

Final Ruling

The Chapter 13 Trustee's 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). The Trustee filed a supplemental objection to confirmation. 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 a confirmation order, the court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtor has failed to identify the effect of Lakeview Loan Servicing's COVID-19 forbearance agreement on the bankruptcy, and how the forbearance arrears will be paid once the forbearance has expired. Debtor's Schedule J does not include a rental or home ownership expense at Line 4 and indicates monthly net income of \$200.00 at Line 23c. Without further information from the Debtor, it cannot be determined whether Debtor's plan is feasible. 11 U.S.C. § 1325(a)(6).

Second, Debtor's plan classifies the holder of the mortgage on Debtor's residence as a Class 4 creditor. Class 4 is a class of claims that are not in default. Creditor Lakeview Loan Servicing LLC/Flagstar Bank FSB has filed proof of claim no. 10-1 which states forth arrears indicating that the loan is in default. Accordingly, this claim is misclassified as a Class 4 claim and should be a Class 1 claim to be paid through Debtor's plan. With this misclassification, Debtor's plan is not feasible. 11 U.S.C. § 1325(a)(6).

The plan filed January 11, 2021, 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.

April 6, 2021 at 1:00 p.m.

2. [21-90011](#)-B-13 ALFREDO/MARTA ACOSTA OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Tamie L. Cummins PLAN BY RUSSELL D. GREER
3-8-21 [[16](#)]

CONTINUED TO 5/04/21 AT 1:00 P.M. TO BE HEARD AFTER DEBTORS' CONTINUED MEETING
OF CREDITORS HELD 4/28/21.

Final Ruling

No appearance at the April 6, 2021, hearing is required. The court will enter a minute order.

3. [21-90014](#)-B-13 JESUS/MARTHA MUNOZ
[RDG](#)-1 Brian S. Haddix

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-8-21 [[19](#)]

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 a confirmation order, the court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to sustain the objection and deny confirmation of the plan.

Debtors' plan is not feasible under 11 U.S.C. § 1325(a)(6). First, Debtors' Schedule E/F provides for the Internal Revenue Service with a priority claim amount of \$0.00. The IRS has filed proof of claim 6-1 with a priority portion of \$8,049.89. Debtors' plan payment is insufficient to pay this claim. Additionally, Debtor's ability to make their monthly plan payment is contingent upon a contribution of \$500.00 from their daughter as listed on Schedule I. Debtors have not provided a declaration from their daughter stating her ability and willingness to financially assist Debtors. Therefore, Debtors' plan is not feasible.

The plan filed January 17, 2021, 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.

4. [20-90339](#)-B-13 BRIAN/TERI SMITH
[JHK](#)-1 Richard Kwun

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-8-21 [[63](#)]

SANTANDER CONSUMER USA INC.
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 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 this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to conditionally deny the motion and **continue the matter to April 13, 2021, at 1:00 p.m.**

Santander Consumer USA Inc. dba Chrysler Capital ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2019 Dodge Challenger (the "Vehicle"). The moving party has provided the Declaration of Ashley Young to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Young Declaration states that there are post-petition payments in default totaling \$2,413.67.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$26,697.24, as stated in the Young Declaration, while the value of the Vehicle is determined to be \$25,000.00, as stated in Schedules A/B and D filed by Debtor.

Opposition

Debtors filed an opposition stating that the Vehicle is driven for personal and family use, is necessary for a successful rehabilitation, and anticipates paying the arrears of \$2,413.67 by April 1, 2021.

Response

Movant filed a response stating that Movant and Debtors have agreed that the Debtors will bring the account fully current by April 1, 2021, and that the parties will enter into a stipulation for adequate protection whereby the Debtors will remain current on future ongoing monthly payments to Santander.

Discussion

If the Debtors' account was brought current by April 1, 2021, Creditor shall file a notice of withdrawal of the motion by 5:00 p.m. on April 9, 2021, and the continued hearing on April 13, 2021, at 1:00 p.m. will be vacated.

If the Debtors' account was not timely brought current, the motion will be heard on the continued hearing date of April 13, 2021, at 1:00 p.m.

The court will issue an order.

5. [21-90066](#)-B-13 CHARLES/G BURLEIGH
[BSH](#)-1 Brian S. Haddix

MOTION TO AVOID LIEN OF
PORTFOLIO RECOVERY ASSOCIATES,
LLC
3-15-21 [[16](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to grant the motion to avoid lien.

This is a request for an order avoiding the judicial lien of Portfolio Recovery Associates, LLC ("Creditor") against the Debtors' property commonly known as 2409 Ives Street, Modesto, California ("Property").

A judgment was entered against Debtor Charles Burleigh in favor of Creditor in the original amount of \$5,933.59. An abstract of judgment was recorded with Stanislaus County on November 18, 2020, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of \$400,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$203,033.00 on Schedule C. The first deed of trust recorded against the Property totals \$196,967.00.

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 Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will issue an order.

Final Ruling

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). The court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to conditionally grant the motion to extend automatic stay and **continue the matter to April 13, 2021, at 1:00 p.m.**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on December 5, 2020, due to delinquency in plan payments and failure to file a new plan (case no. 19-90850, dkt. 39). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor asserts that his circumstances have changed because his adult children who are gainfully employed have moved back home to financially help the Debtor. Although the Debtor filed a declaration, no declaration was filed by any of the adult children stating their ability and willingness to provide Debtor with financial contributions. Therefore, at least on the record before it, the Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

That being said, the motion is conditionally granted. The automatic stay of 11 U.S.C. § 362(a) shall be extended as to all creditors, parties, and parties in interest for all purposes provided: **(1)** supplemental declarations from the Debtor's adult children attesting to their ability and willingness to contribute to the Debtor financially, and the amount(s) of any contributions, are filed and served by 5:00 p.m. on April 9, 2021; and **(2)** no opposition(s) is/are filed and served by 5:00 p.m. on April 9, 2021.

Declaration and/or opposition(s), if any, shall be served on the Chapter 13 Trustee and the United States Trustee by email or facsimile. If declarations are timely filed and served and opposition(s) is/are not, the continued hearing on April 13, 2021, at 1:00 p.m. will be vacated.

If declarations are not timely filed and served the motion will be denied for the reasons stated above, the automatic stay will terminate in its entirety, and the continued hearing on April 13, 2021, at 1:00 p.m. will be vacated.

If opposition(s) is/are timely filed and served, subject to further extension, the automatic stay is extended to April 13, 2021, as to all creditors, parties, and parties in interest for all purposes and the motion will be heard on April 13, 2021, at 1:00 p.m.

The court will issue an order.

7. [20-90753](#)-B-13 ELLEN ST. CLAIR
[RDG](#)-2 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
3-8-21 [[30](#)]

Final Ruling

This matter was continued from March 30, 2021, to allow any party to file an opposition or response to the court's ruling by Friday, April 2, 2021. No opposition or response was filed. Therefore, the court's ruling at dkt. 34, which granted the motion to dismiss case, will no longer be conditional and will become the court's final decision. The continued hearing on April 6, 2021, at 1:00 p.m. is vacated.

The court will enter a minute order.

8. [20-90764](#)-B-13 LUCIO/VERONICA AMARAL
[RDG](#)-2 T. Mark O'Toole

CONTINUED MOTION TO DISMISS
CASE
3-8-21 [[26](#)]

Final Ruling

This matter was continued from March 30, 2021, to allow any party to file an opposition or response to the court's ruling by Friday, April 2, 2021. No opposition or response was filed. Therefore, the court's ruling at dkt. 30, which granted the motion to dismiss case, will no longer be conditional and will become the court's final decision. The continued hearing on April 6, 2021, at 1:00 p.m. is vacated.

The court will enter a minute order.