

**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 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  
Sacramento, California

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

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1. [20-24704](#)-B-13 JAMES/JUNE GRAY MOTION TO CONFIRM PLAN  
[AHN](#)-1 David A. Boone 2-16-21 [[42](#)]

**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 Debtors have 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 Debtors 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.

2. [17-25224](#)-B-13 RAUL/GUADALUPE LUGO  
[MC-3](#) Muoi Chea

OBJECTION TO CLAIM OF  
EMPLOYMENT DEVELOPMENT  
DEPARTMENT, CLAIM NUMBER 7  
2-16-21 [[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 the objection to Claim No. 7 of Employment Development Department.

Debtors Raul Lugo and Guadalupe Lugo ("Debtors") request that the court disallow the claim of Employment Development Department ("Creditor"), Claim No. 7, as being secured and instead treat it as entirely unsecured. The claim is asserted to be secured in the amount of \$19,968.04. The Debtors state that the claim is not secured against Joint Debtor, whose name was misspelled in the proof of claim, because they do not have any ownership interest in any real property in Alameda County for the judicial lien to attach. This is supported by Debtor's Schedule A/B which does not include real property in Alameda County, California.

### **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 Debtors have satisfied their burden of overcoming the presumptive validity of the claim. The Debtors do not have any ownership interest in any property in Alameda County, California for Creditor's judicial lien to attach.

Based on the evidence before the court, the Creditor's claim is disallowed as being secured and allowed as being unsecured. The objection to the proof of claim is sustained.

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

The court will issue an order.

SO-CAL CAPITAL, INC. VS.

### **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 for relief from automatic stay.

So-Cal Capital, Inc. as servicer for Richard R. Reiter and Paula A. Reiter, Trustees of the Reiter Family Trust dated July 27, 2005 ("Movant"), seeks relief from the automatic stay with respect to real property commonly known as 6724 Plymouth Road #65, Stockton, California (the "Property"). Movant has provided the Declaration of Patrick Lacy to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Lacy Declaration states that original borrower on the promissory note Prestige Legacy, LLC ("Borrower"), the sole member of the Borrower is Cecilia Gines ("Gines"). In order to stall multiple unlawful detainer actions, Borrower transferred title to Gines and Jazmine Escotto ("Escotto"), thereafter a 10% interest in the Property to Gines' son-in-law Marcelino Mireles, thereafter a lease to Desiree Marrs and Marcelo Montantes as tenants with Gines and Escotto as landlords, and thereafter to Juan Munante ("Debtor"), Josie Perez ("Perez"), and Joey Rodriguez ("Rodriguez") as occupants of the Property.

Movant seeks to move forward with the unlawful detainer action that was scheduled for March 5, 2021, and which was stayed when Debtor filed for bankruptcy. Movant asserts that the Debtor and non-debtors Perez and Rodriguez have no permission to be on the Property.

### **Discussion**

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of San Joaquin on February 16, 2021.

Movant has provided a copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Dkt. 25, exh. M. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. § 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at \*8-\*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other

appropriate judicial proceedings and remedies to obtain possession thereof.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The court will enter a minute order.

4. [20-24737](#)-B-13 CHRISTIAN LOPEZ MOTION TO CONFIRM PLAN  
[RDG-1](#) Richard Kwun 2-20-21 [[28](#)]  
**Thru #5**  
DEBTOR DISMISSED: 2/25/21

**Final Ruling**

The case was dismissed on February 25, 2021. Therefore, the motion to confirm plan is denied as moot.

The court will enter a minute order.

5. [20-24737](#)-B-13 CHRISTIAN LOPEZ OBJECTION TO CLAIM OF RESURGENT  
[RK-2](#) Richard Kwun CAPITAL SERVICES, CLAIM NUMBER  
1  
DEBTOR DISMISSED: 2/25/21 2-20-21 [[33](#)]

**Final Ruling**

The case was dismissed on February 25, 2021. Therefore, the objection to claim is overruled as moot.

The court will enter a minute order.

6. [21-20046](#)-B-13 MOHAMMAD/SABA CHOUDHRY  
[RDG](#)-1 Brian S. Haddix

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
3-8-21 [[25](#)]

### **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. 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.

The Trustee states that the Debtors appeared at their continued meeting of creditors on March 31, 2021 and that the meeting was concluded. Debtors testified that they will be filing an amended plan to address the excess income and overwithholding objections raised by the Trustee.

The plan filed January 7, 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.

7. [20-22949](#)-B-13 ROBERT/PENELOPE CASH MOTION TO CONFIRM PLAN  
[JAD](#)-5 Jessica A. Dorn 2-11-21 [[72](#)]

**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 Debtors have 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 Debtors 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.





9. [20-25153](#)-B-13 MICHAEL/JOLENE YATES  
[CLH](#)-1 Charles L. Hastings

MOTION FOR DETERMINATION THAT  
PAYMENTS ARE NOT PROPERTY OF  
PRIOR CHAPTER 7 ESTATE  
3-4-21 [[45](#)]

### **Final Ruling**

The court entered an order on April 2, 2021, in the pending chapter 7 bankruptcy, case no. 17-21302, dkt. 48, and in this case at dkt. 67. The motion is therefore denied as moot. The hearing on April 6, 2021, at 1:00 p.m. is vacated.

The court will enter an order.

10. [20-23961](#)-B-13 PETER/MEGAN GALLEGOS  
[NAR-2](#) Charles L. Hastings

MOTION TO VALUE COLLATERAL OF  
FIRST TECH FEDERAL CREDIT UNION  
3-2-21 [[50](#)]

### **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 First Tech Federal Credit Union at \$20,000.00.

Debtors Peter Gallegos and Megan Gallegos ("Debtors") move to value the secured claim of First Tech Federal Credit Union ("Creditor"). Debtors are the owner of a 2016 Kia Sedona ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$20,000.00 as of the petition filing date. As the owner, Debtors' 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. 10-1 filed by First Tech Federal Credit Union is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred on December 28, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$25,087.43 according to claim no. 10-1. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$20,000.00. 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.

**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 Debtors have 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 Debtors 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.

12. [19-27297](#)-B-13 RICKY/JENNY MARTIN  
[JHK](#)-1 Muoi Chea

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-18-20 [[54](#)]

AMERICREDIT FINANCIAL  
SERVICES, 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). 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 grant the motion for relief from automatic stay.

Americredit Financial Services, Inc. ("Movant") seeks a renewed relief from the automatic stay with respect to an asset identified as a 2017 Dodge Grand Caravan (the "Vehicle"). The moving party has provided the Declaration of Lorenzo Nunez to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

Movant and Debtors Ricky Martin and Jenny Martin ("Debtors") had entered into a stipulation on June 16, 2020, resolving the original motion for relief from stay filed May 18, 2020, and which required the Debtors to stay current with payments, to cure post-petition arrears, and to allow Movant to restore its motion with proper notice should the Debtors default on the contract.

The Nunez Declaration states that Debtors are in default for a total of \$2,737.92. The last payment received from Debtors was on October 31, 2020, and applied to the October 20, 2020, regular and cure payments. As of March 1, 2021, the Debtors are indebted to Movant in the sum of \$19,086.81.

### **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 Debtors 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 Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors 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.

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 is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

13. [16-25918](#)-B-13 MICHAEL SHELBY  
[RDG](#)-2 Michael K. Moore

CONTINUED MOTION TO DISMISS  
CASE  
3-9-21 [[70](#)]

**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. 80, 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.