

**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 12, 2022

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 12, 2022 at 1:00 p.m.

1. [21-23700](#)-B-13 ESTHER MONTIEL-GONZALEZ OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Lars T. Fuller PLAN BY RUSSELL D. GREER
3-22-22 [[50](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Trustee having filed a notice of dismissal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed February 7, 2022, will be confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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.

April 12, 2022 at 1:00 p.m.

2. [21-23531](#)-B-13 DIANA QUIROGA
[RJ-3](#) Richard L. Jare

MOTION TO VALUE COLLATERAL OF
ONEMAIN FINANCIAL GROUP, LLC
3-29-22 [[58](#)]

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 value the secured claim of OneMain Financial Group, LLC at \$4,100.00 and continue the matter to April 19, 2022 at 1:00 p.m.

Debtor moves to value the secured claim of OneMain Financial Group, LLC ("Creditor"). Debtor is the owner of a 2005 Ford F-150 Pickup Truck ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$4,100.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 1-1 filed by OneMain Financial Group, LLC is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title does not secure a purchase-money loan and instead was a lien against the Vehicle in exchange for a loan with a secured portion of \$6,929.55 and a total claim of \$9,425.00. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. 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 \$4,100.00. 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.

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 15, 2022, 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 19, 2022, 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 19, 2022, at 1:00 p.m.

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

The court will issue an order.

3. [21-23755](#)-B-13 DONALD VUONG
[CDL](#)-1 Colby D. LaVelle

MOTION TO CONFIRM PLAN
2-16-22 [[33](#)]

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, Creditor TD Auto Finance LLC ("Creditor") objects to confirmation of Debtor's plan on the grounds that Debtor's proposed plan incorrectly lists the monthly contract amount as \$533.00, and asserts that the correct contract amount is \$729.07.

Second, the Debtor has failed to provide evidence that the plan is mathematically feasible. The plan provides a monthly payment of \$2,273.18 and a 63% dividend to general unsecured creditors. Based on the claims that have been filed to date, the Debtor's monthly plan payment will need to be at least \$2,509.60 in order for the plan to be feasible as proposed paying unsecured creditors 63%. 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.

4. [22-20090](#)-B-13 SUSIE/MARK BULMER
[ES-1](#) Eric L. Seyvertsen

MOTION TO CONFIRM PLAN
3-11-22 [[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 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.

5. [21-20893](#)-B-13 JARED GOODRICH
[DVW](#)-1 Michael K. Moore

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
3-29-22 [[70](#)]

U.S. BANK, NATIONAL
ASSOCIATION VS.

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 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 **continue the matter to May 3, 2022, at 1:00 p.m.** to be heard in conjunction with the motion to confirm a fourth amended plan filed by Debtor Jared Goodrich ("Debtor"), and set a corresponding briefing schedule.

U.S. Bank National Association ("Secured Creditor") seeks relief from the automatic stay with respect to real property commonly known as 910 Mandeville Street, Manteca, California, 95337 (the "Property"). Secured Creditor has provided the Declaration of Brian Gaske to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Gaske Declaration states that there are 4 post-petition payments in default totaling \$5,138.08.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$335,991.42 as stated in the Gaske Declaration and Schedule D filed by the Debtor. The value of the Property is determined to be \$512,000.00 as stated in Schedules A/B and D filed by Debtor.

Discussion

In a motion brought under § 362(d)(1), the party seeking relief bears the burden on the issue of the debtor's equity - or lack thereof - in property. 11 U.S.C. § 362(g)(1). Creditor has not met this burden.

Secured Creditor submitted no evidence of the Property's value with its motion. The only evidence of the Property's value is in Schedule A/B which values the Property at \$512,000.00. Dkt. 13 at 1.

Schedules are filed under penalty of perjury. See Fed. R. Bankr. P. 1008. Some courts treat schedules as evidentiary admissions under Federal Rule of Evidence 801(d)(2). *Heath v. American Express Travel Related Services Co., Inc. (In re Heath)*, 331 B.R. 424, 431 (9th Cir. BAP 2005). Others treat them as judicial admissions. *In re Roots Rents, Inc.*, 420 B.R. 28, 40 (Bankr. D. Utah). Whatever their status, schedules carry evidentiary weight. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969-70 (9th Cir. 2012). Therefore, for purposes of this motion only, the court relies on Schedule A/B as the only evidence of the Property's value and values the Property at \$512,000.00.

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Secured Creditor claims it is owed \$329,516.04 as of March 2021. Based on the Property's \$512,000.00 value, that leaves equity of \$182,483.96, which in turn creates an equity cushion of 35.641%.

Moreover, relief from the automatic (and co-debtor) stays based upon a postpetition (or post-confirmation) default is not automatic. See *In re Avila*, 311 B.R. 81, 83 (Bankr. N.D. Cal.2004) (debtor's postpetition defaults may constitute "cause" for relief from stay; however, this is not a per se rule that must be applied in vacuum). Instead, the court should determine whether the default is a brief lapse or material. See *In re Dumbuya*, 428 B.R. 410, 416-17 (Bankr. N.D. Ohio 2009). "Considerations relevant to whether a breach is material may take into account whether the payment difficulties encountered by the debtor were of brief duration, and whether the debtor has the willingness and the current means or near-present ability to cure the default to the secured creditor." *Id.* at 417 (citations omitted). The default here appears to be a brief lapse which the Debtor is willing and able to cure.

The Debtor filed a fourth amended plan on March 16, 2022, with a hearing date of May 3, 2022. Dkt. 68. The Debtor's fourth amended plan proposes to cure the default in payments due Creditor. See Dkt. 68 at § 7.03. The motion to confirm the fourth amended plan also states as follows:

7. Based on the uncertain timing of both the MoneyGram refund and the resolution of the Tesla payroll issues described above, the Debtor, by and through his attorney, proposes to make a one-time increased plan payment of \$8,500.00 on or before March 25, 2021.

a. This one-time increased plan payment will account for the plan delinquency of \$6,375.00 plus the regular payment of \$2,125.00 that will be due on that day.

i. The one-time increased payment will allow for the payment of all overdue payments owed to Class 1 creditor Rushmore Loan Mgmt., for both the arrearage dividend and post-petition monthly payments. The details of this plan are specified in the 'Additional Provisions' of the Fourth Amended Plan.

Dkt. 64 at 4:1-9.

The significant amount of equity - and thence the substantial equity cushion - supports a brief continuance of the hearing on Secured Creditor's motion.

And because Secured Creditor filed, set, and served its motion under Local Bankr. R. 9014-1(f)(2), the court will issue a briefing schedule.¹ See Local Bankr. R. 9014-1(f)(2)(C). Therefore:

- (1) The Debtor shall file and serve a response to Secured Creditor's motion by **April 19, 2022**, which states whether the March 25, 2022, payment proposed in the motion to confirm the fourth amended plan has been made. The response may include any other matter relevant to Creditor's motion.
- (2) Secured Creditor may file and serve an optional reply by **April 26, 2022**.

The hearing on Secured Creditor's motion is ORDERED CONTINUED to **May 3, 2022, at 1:00 p.m.**

The court will issue an order.

¹Filing and serving the motion under Local Bankr. R. 9014-1(f)(2) also constitutes a waiver of 11 U.S.C. § 362(e). See Local Bankr. R. 9014-1(f)(2)(B).