

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

1. [21-23700](#)-B-13 ESTHER MONTIEL-GONZALEZ MOTION FOR RELIEF FROM
[KMM](#)-1 Lars T. Fuller AUTOMATIC STAY
3-17-22 [[40](#)]

VW CREDIT, 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.

VW Credit, Inc., d/b/a Audi Financial Services, ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2019 Audi Q7 (the "Vehicle"). The moving party has provided the Declaration of Lucy Perez to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Perez Declaration states that Debtor and non-filing co-Debtor have failed to provide a valid, written proof of insurance, and Movant has been unable to verify Debtor's and non-filing co-Debtor's insurance coverage on the Vehicle. Movant believes that Debtor and non-filing co-Debtor are operating the property without having any insurance coverage thereon. If this is correct, Debtor and non-filing co-Debtor have defaulted under the parties' contractual agreement by failing to comply with the applicable provisions of the prevailing contractual agreement, under which Debtor and non-filing co-Debtor agreed to keep the property properly insured at all times and with an insurer and in an amount acceptable to Movant. Not only does Debtor and non-filing co-Debtor's lack of insurance coverage violate the parties' contractual agreement, it also violates Section 16451 of the California Vehicle Code as it applies to mandatory insurance coverage, which places an undue, unnecessary burden on Movant.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$59,292.00, as stated in the Perez Declaration, while the value of the Vehicle is determined to be \$37,775.00, as stated in Schedules A/B and D filed by Debtor.

The Vehicle is listed in Class 3 of the plan as a secured claim to be surrendered by the Debtor.

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.

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9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the non-filing co-Debtor have defaulted under the parties' contractual agreement by failing to keep the property properly insured at all times and with an insurer and in an amount acceptable to Movant. 11 U.S.C. § 362(d)(1).

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). Moreover, the Debtor intends to surrender the Vehicle since it is listed in Class 3 of the plan. 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 is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

2. [21-23801](#)-B-13 ROBERT MOLINA CONTINUED OBJECTION TO CLAIM OF
[WLG](#)-1 Nicholas Wajda CHRISTINA MOLINA, CLAIM NUMBER
Thru #3 6
2-12-22 [[50](#)]

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 overrule the objection without prejudice.

The posture of the claim objection presently before the court is somewhat of an anomaly. Debtor Robert Molina ("Debtor") filed a chapter 13 petition on November 3, 2021. Some six weeks later Christina Molina ("Ms. Molina"), the debtor's former spouse and a creditor in this case, filed a proof of claim, Claim No. 6-1, in the amount of \$99,328.38. The claims is filed as a priority claim with \$51,772.48 asserted to be secured and \$47,555.90 asserted to be unsecured.

On December 17, 2021, the same day on which Ms. Molina filed her proof of claim, she also commenced an adversary proceeding captioned *Molina v. Molina*, Adv. No. 21-02087. The debt at issue in the complaint filed in the adversary proceeding is the same debt asserted in the proof of claim and which is the subject of the claim objection. *Compare* Adv. Dkt. 1 with Claim No. 6-1 with BK Dkt. 50. The complaint alleges that debt, among others, is nondischargeable under 11 U.S.C. §§ 523(a)(4), (a)(5), (a)(6), and (a)(15). The Debtor answered the adversary complaint on January 17, 2022, and filed an amended answer the following day, January 18, 2022.

The Debtor filed the present claim objection less than one month later, on February 12, 2022. The Debtor noticed a hearing on the claim objection for March 15, 2022. The court continued the hearing to April 19, 2022.

The problems here are twofold. First, as noted above, the debt at issue in the adversary proceeding, proof of claim, and claim objection are the same. Second, the claim objection essentially mirrors one of the Debtor's affirmative defenses asserted in the amended answer filed in the adversary proceeding. *Compare* BK Dkt. 50 at ¶¶ 8-23 with Adv. Dkt. 10, Affirmative Defenses ¶ 2. That effectively makes the claim objection a procedurally improper and substantively defective summary judgment motion insofar as it was not set on 42 days' notice, was not filed with a separate statement of undisputed facts, and, most important, was filed as a stand-alone contested matter outside the context of the adversary proceeding. The claim objection will therefore be overruled without prejudice.

The claim objection is ORDERED OVERRULED without prejudice.

The court will issue an order.

3. [21-23801](#)-B-13 ROBERT MOLINA CONTINUED MOTION TO AVOID LIEN
[WLG](#)-2 Nicholas Wajda OF CHRISTINA MOLINA
2-12-22 [[55](#)]

Final Ruling

No appearance at the April 19, 2022, hearing is necessary. On April 6, 2022, the Debtor

filed an Ex Parte Motion to Continue Hearing on Debtor's Amended Motion to Avoid Judgment Liens Against Debtor Impairing Debtor's Exemptions. Dkt. 86. Debtor's Motion pleaded for the court continue the hearing from April 19, 2022 until May 17, 2022. The court entered an order granting Debtor's Ex Parte Motion to Continue Hearing on April 8, 2022. Dkt. 87. Accordingly, the Continued Motion to Avoid Lien of Christina Molina will be held on May 17, 2022.

The court will issue an order.

4. [21-20770](#)-B-13 ANGELAS ASHLEY
[JLL](#)-5 Jennifer G. Lee

MOTION TO CONFIRM PLAN
3-10-22 [[93](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

5. [19-21273](#)-B-13 LUKE LACASSE MOTION TO MODIFY PLAN
 [GSJ](#)-2 Grace S. Johnson 3-3-22 [[56](#)]

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. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

6. [21-23996](#)-B-13 SANDRA DAVIS
[GT-2](#) Eric John Schwab

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT
AND/OR MOTION TO EXTEND
DEADLINE TO FILE A COMPLAINT
OBJECTING TO DISCHARGE OF THE
DEBTOR
3-10-22 [[29](#)]

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.

Jeffrey Scott Bleecker, as trustee for the Bleecker Family Trust; Lance Evic; and Lisa Motes (collectively, the "Lenders") request an extension to file a complaint objecting to discharge of the Debtor. The current deadline was March 20, 2022, and Lenders request that it be extended by ninety (90) days to June 18, 2022.

Lenders assert that cause exists to extend the deadline pursuant to Federal Rule of Bankruptcy Procedure 4004(b) or 4007(c) because (1) Lenders have attempted, without success, to obtain documents and information from Debtor on a consensual basis in order to evaluate the merits of asserting such underlying claims but the Debtor has failed and refused to cooperate; (2) Lenders have moved for permission to conduct a Rule 2004 examination of the Debtor; and (3) unless the deadlines to bring such claims are extended, Lenders will not have access to the requested documents or be able to conduct the examination until the time to bring such claims will otherwise expire.

Discussion

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b). The Lenders explain that they require more time to investigate Debtor's records than they normally would have to because Debtor has been uncooperative in providing documents. Lenders have moved for permission to conduct a Rule 2004 examination of the Debtor. Additionally, no opposition has been filed.

The court finds the Lenders' need to perform further investigation of the Debtor and her records is sufficient cause. Therefore, the motion is granted and the deadline for the Trustee to object to Debtors' discharge is extended to June 18, 2022.

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

The court will issue an order.

7. [21-23531](#)-B-13 DIANA QUIROGA CONTINUED MOTION TO VALUE
[RJ-3](#) Richard L. Jare COLLATERAL OF ONEMAIN FINANCIAL
GROUP, LLC
3-29-22 [[58](#)]

Final Ruling

This matter was continued from April 12, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, April 15, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 67, granting the motion, shall become the court's final decision. The continued hearing on April 19, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.