

**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: May 2, 2023

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

May 2, 2023 at 1:00 p.m.

1. [19-91014](#)-B-13 SANDRA RODRIGUEZ MOTION TO COMPEL
[EAT](#)-2 Brian S. Haddix 3-29-23 [[146](#)]

Final Ruling

Secured creditor Wells Fargo USA Holdings, Inc. ("Movant") moves the court for an order compelling Debtor Sandra Rodriguez ("Debtor") to provide proof of payment of property taxes and insurance advanced by Movant, or to amend the plan to provide for the cure of the aforementioned pursuant to the approved stipulation entered on October 6, 2020. Dkt. 111. Alternatively, Secured Creditor requests dismissal of the case.

The stipulation states that the confirmed plan provides for the payment of Movant's secured claim in full but fails to fully address how real property taxes and insurance are to be paid in the plan. The Debtor and Movant stipulated that Movant may file either a supplemental proof of claim or notices of payment change under Bankruptcy Rule 3002.1 to advise the Debtor of the real property tax and insurance deficiencies over time.

The motion is not opposed. However, the absence of an opposition does not necessarily mean that a motion will automatically be granted. *Rivas-Almendarez v. Holder*, 362 Fed. Appx. 606 (9th Cir. 2010). Even an unopposed motion must have merit and there must be a basis for the court to grant the relief requested. See generally, *In re Bassett*, 2019 WL 993302, *5 (Bankr. E.D. Cal. 2019).

The court has reviewed the motion. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1). Oral argument is not necessary and will not assist in the decision-making process. See Local Bankr. R. 1001-1(f), 9014-1(h).

The court's decision is to deny the motion without prejudice.

The court construes the motion as one for a comfort order regarding the Debtor's compliance with her obligations under the approved stipulation. As a general matter, this court does not issue comfort orders because they are not authorized by any provision of the Bankruptcy Code. See generally, *In re Chatha*, case no. 17-25335, dkt. 229 (March 8, 2022); *In re NIR West coast, Inc., dba Northern California Roofing*, 2021 WL at 27407 at *2 (Bankr. E.D. Cal. Jan. 4, 2021).

If the Debtor has not complied with terms of the stipulation, or if Movant has a good faith belief that the Debtor has not complied, the proper enforcement remedy appears to be a motion for contempt of the order approving the stipulation or, according to the stipulation itself, a motion for relief from the automatic stay for noncompliance with the stipulation and/or nonpayment of taxes and insurance. See dkt. 111, Ex. A at ¶ 5.

The motion is ORDERED DENIED WITHOUT PREJUDICE.

The court will issue an order.

May 2, 2023 at 1:00 p.m.

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2. [23-90054](#)-B-13 RYAN/SUSAN LANE
[RDG](#)-1 Simran Singh Hundal

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-12-23 [[20](#)]

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 the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. 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 sustain the objection and deny confirmation of the plan.

The Debtors have failed to file amended schedules to reflect Joint Debtor Susan Lane's new employment. Until debtors file amended schedules, it cannot be determined whether the plan is feasible and pays all projected disposable income for the applicable commitment period to Debtors' general unsecured creditors. 11 U.S.C. §§ 1325(a)(6) and (b)(1).

The plan filed February 9, 2023, 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.

3. [22-90166](#)-B-13 MICHELLE MOTION FOR RELIEF FROM
[CAS](#)-1 NIGHTENGALE-PERRY AND AUTOMATIC STAY
Kevin Tang 3-22-23 [[63](#)]
CAPITAL ONE AUTO FINANCE,
N.A. 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 stay.

Capital One Auto Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Dodge Grand Caravan Passenger SE Minivan 4D (the "Vehicle"). The moving party has provided the Declaration of Jeanne Scharf to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtors.

The Scharf Declaration states that there is 1 pre-petition payment in default totaling \$359.97. Additionally, there are 6 post-petition payments in default totaling \$2,159.82.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$18,765.70, as stated in the Scharf Declaration, while the value of the Vehicle is determined to be \$13,017.00, as stated in the Scharf Declaration. Neither the Debtors' petition nor the plan list Movant or the Vehicle.

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 Debtor/s 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.

4. [22-90095](#)-B-13 CHERYL PORTER
Thru #5 SCHIMMELFENNIG
Gordon G. Bones

MOTION TO CONFIRM PLAN
3-20-23 [[102](#)]

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, the Debtor has failed to use a docket control number on her motion and supporting documents pursuant to Local Bankr. R. 9014-1(c)(1).

Second, Nationstar Mortgage LLC d/b/a Mr. Cooper filed Claim No. 4-1 listing a secured portion of \$118,495.70. Debtor's plan, amended budget, and amended Statement of Financial Affairs are silent as to treatment of this creditor. It is unclear whether Debtor intends to pay this creditor of, if it is to be paid, how it is to be paid. This impacts whether the Debtor will be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6).

Third, the plan provides for Specialized Loan Servicing as a Class 2a creditor to be paid 0% interest. However, a stipulation entered into between Debtor and the creditor and approved by the court provides a fixed interest rate of 4.00% per annum.

Fourth, the plan provides for Specialized Loan Servicing to be paid a monthly dividend of \$8,862.67. Debtor's plan proposes payments of \$1,050.00 for 1 month, \$1,200.00 for 5 months, \$0.00 for 4 months, \$6,000.00 for one month, \$500.00 for 4 months and a lump sum payment \$142,510.00 in month 16. Debtor's plan is not feasible. 11 U.S.C. § 1325(a)(6).

Fifth, Debtor's Schedules I and J demonstrate net disposable income of \$1,352.50 per month. However, Debtor's motion and declaration are silent as to why plan payments are \$0.00 a month in months 7 through 10, and only \$500.00 a month in months 12 through 15. 11 U.S.C. § 1325(b).

Sixth, Debtor has proposed a 16-month plan term and a 0% dividend to general unsecured claims. Section 2.03 of the plan states that the monthly plan payments will continue for 16 months unless all allowed unsecured claims are paid in full within a shorter period of time. As such, allowed unsecured claims should be paid at 100%.

Seventh, the lump sum payment of \$142,510.00 in month 16 is predicated on the sale of real property located at 14365 Las Palmas Way, La Grange, California. The sale of this property is speculative.

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.

5. [22-90095](#)-B-13 CHERYL PORTER
SCHIMMELFENNIG
Gordon G. Bones

MOTION TO SELL
3-20-23 [[104](#)]

Final Ruling

The motion has been set for hearing on the notice required by 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). The defaults of the non-responding parties are entered.

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 deny without prejudice the motion to sell.

The Bankruptcy Code permits Chapter 13 debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 14365 Las Palmas Way, La Grange, California ("Property") with Debtor's husband Peter Schimmelfennig serving as broker. Mr. Schimmelfennig holds a ½ interest in the Property and proposes to aggressively market the Property over a 120-day period to be sold no later than September 2, 2023. At this time, there is no proposed buyer and no estimated closing statement has been filed with the motion.

Separately, the Debtor has failed to use a docket control number on her motion and supporting documents pursuant to Local Bankr. R. 9014-1(c)(1).

Given that there is no proposed buyer and no estimated closing statement, approval of the motion to sell is premature. Therefore, the motion to sell will be denied without prejudice.

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

The court will issue an order.