

**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: May 9, 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
Sacramento, California

May 9, 2023 at 1:00 p.m.

1. [20-21602](#)-B-13 JOSE/LETICIA GONZALEZ MOTION TO MODIFY PLAN
[GSJ](#)-2 Grace S. Johnson 3-6-23 [[80](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 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). 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 **continue the matter to May 16, 2023, at 1:00 p.m.**

The Chapter 13 Trustee objects to confirmation of the plan on feasibility and good faith issues. Specifically, Debtors' plan fails to provide post-petition arrears to Class 1 creditor Rightpath Servicing, monthly payments for months 36 to 60 will need to be increased in order to be mathematically feasible, the interest paid to Exeter Finance LLC and Peritus Portfolio Services II, LLC may not be modified, and Debtors' expense for entertainment and recreation is excessive for a household of four considering they are reducing the dividend to Class 7 general unsecured creditors to 0%.

Debtors filed a response stating that they agree to increase their plan payment so that the plan is feasible. Debtors' state that their attorney is in contact with the Trustee's office to determine the amount that would cover the mortgage arrears and the vehicle payments without modifying the interest rate paid to the secured creditors. Debtors intend to do this by using funds budgeted for entertainment and recreation.

While Debtors' response shows their willingness to resolve the issues raised by the Trustee, the response was not accompanied by a proof of service and it is unclear whether the Trustee and interested parties were served.

Therefore, the court will allow the Debtors to submit their proof of service no later than 5:00 p.m., May 10, 2023. The Trustee shall file a response by 5:00 p.m., May 12, 2023, as to whether its issues are resolved. The motion to modify plan will be continued to 1:00 p.m., May 16, 2023.

The court will issue an order.

2. [23-20748](#)-B-13 RONALD/YUVETTA PERRIN
[ADR-1](#) G. Michael Williams

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-10-23 [[32](#)]

AU FORTUNA, LLC 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.

Au Fortuna, LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 5635 Jeremy Way, Stockton, California (the "Property"). Movant has provided the Declaration of Stacey Phillips to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Phillips Declaration states that Joint Debtor Yuvetta Perrin entered into a lease agreement with respect to the Property. Movant states that the Debtors are delinquent in pre-petition rent in the amount of \$1,725.00. This represents the rent from March 1, 2023. Movant seeks to proceed with an unlawful detainer action in state court.

Discussion

Movant has filed as an exhibit a residential lease agreement entered into between landlord Nancy Cheng and tenant Yuvetta Pryor, this surname of which was used by Joint Debtor Yuvetta Perrin within the last 8 years according to the filed petition. Although the residential lease agreement does not name Movant Au Fortuna, LLC, at a minimum it provides evidence that Joint Debtor does not have any lawful possessory interest in the Property other than as tenant.

Based on the evidence presented, Debtors would be at best tenants at sufferance. It does not appear that Movant has yet commenced an unlawful detainer action in state court or served a Notice to Quit. The court determines that there is no equity in the property for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2).

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 motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

3. [23-21176](#)-B-13 OMAR ESCOBAR
[ADR](#)-1 Pro Se

SURINDERJIT SINGH VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
4-19-23 [[11](#)]

Final Ruling

The case having been dismissed on May 1, 2023, the motion for relief from stay is denied as moot.

The motion is ORDERED DENIED AS MOOT for reasons stated in the minutes.

The court will issue an order.