

**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 17, 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

May 17, 2022 at 1:00 p.m.

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1. [21-23801](#)-B-13 ROBERT MOLINA AMENDED MOTION TO AVOID LIEN OF  
[WLG](#)-2 Nicholas Wajda CHRISTINA MOLINA  
4-6-22 [[82](#)]

**Final Ruling**

The court has before it a *Motion to Avoid Judgment Liens Against Robert Francis Molina Impairing Debtor's Exemptions* filed by debtor Robert Francis Molina ("Debtor"). Debtor moves to avoid two judicial liens obtained by Christina Molina ("Creditor") which the Debtor asserts impair his exemptions in personal property.

The court has reviewed the motion and all related documents. The court has also reviewed and takes judicial notice of the docket in this chapter 13 case and in the related adversary proceeding, Adv. No. 21-02087. See Fed. R. Evid. 201(c)(1).

Oral argument will not assist in the resolution of the motion or in the decision-making process. See Local Bankr. R. 1001-1(f), 9014-1(h). The motion will be decided on the papers.

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). The Debtor still "bears the burden of proof by a preponderance of the evidence on every element of § 522(f)." *In re Armenakis*, 406 B.R. 589, 604 (Bankr. S.D.N.Y. 2009); see also *Reynolds v. Swedelius (In re Reynolds)*, 2006 WL 6811035 at \*8 (9th Cir. BAP Aug. 4, 2006). Thus, even in the absence of an objection by a judicial lien creditor, the court cannot grant affirmative relief unless the debtor has established a prima facie basis for the relief sought. *In re Schneider*, 2013 WL 5979756 at \*3 (Bankr. E.D.N.Y. Nov. 8, 2013). The Debtor has not made that showing.

Debtor moves to avoid Creditor's liens pursuant to Bankruptcy Code § 522(f)(1)(A) which states as follows:

Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5) [.]

11 U.S.C. § 522(f)(1)(A) (emphasis added).

There are two liens at issue. One arises from a Notice of Judgment Lien that Creditor filed with the California Secretary of State on December 28, 2020. Dkt. 82 at 2:1-3. The other is a lien created pursuant to C.C.P. §§ 708.110(a) and (d) which arose when

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Creditor filed and served the Debtor with an Application and Order for Appearance and Examination on December 31, 2020. *Id.* at 2:4-11. The court assumes for purposes of this decision that both liens are judicial liens.

Nevertheless, the Debtor has not demonstrated that the liens are judicial liens other than judicial liens that secure a § 523(a)(5) debt. See *In re Deangelis*, 2010 WL 1509111 at \*2 (Bankr. M.D. Pa. Dec. 28, 2010) (“[I]t is incumbent upon the Debtor filing the motion to avoid the lien to establish, by a preponderance of the evidence, that the lien in question is not a lien that secures a debt of a kind specified in § 523(a)(5).”) The problem arises because whether the debt that the liens secure is one under § 523(a)(5) is at directly issue in the related adversary proceeding. See Adv. Dkts. 1 at ¶ 10, 10 at ¶ 10. Avoidance of the liens through this contested matter is therefore premature and procedurally improper for the same reasons stated in the court’s ruling at Dkts. 90 and 91. In other words, by avoiding the liens the court would necessarily determine that the underlying debt is not one under § 523(a)(5) which would effectively grant summary judgment on a claim at issue in the adversary proceeding.

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

The court will be prepare an order.

2. [21-23825](#)-B-13 ANGELINA/MIGUEL PEINADO MOTION TO CONFIRM PLAN  
[MMN](#)-2 Michael M. Noble 4-1-22 [[82](#)]  
**Thru #3**

**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, the feasibility of Debtors' plan is contingent upon a loan modification with mortgage creditor Deutsche Bank National Trust. Deutsche Bank National Trust has filed a proof of claim listing a secured amount of \$334,714.98. The plan filed April 1, 2022 provides for Deutsche Bank as a Class 2 claim in the amount of \$334,651.00 to be paid at 0% interest a monthly dividend of \$1,280.00. Debtors' motion to incur debt was denied without prejudice at Item #3 (MMN-3). Because the court has not entered an order granting the motion to incur debt, Debtors' plan is not feasible. 11 U.S.C. §1325(a)(6).

Second, Debtors' plan fails the liquidation test of 11 U.S.C. §1325(a)(4). Debtors' schedules list non-exempt assets totaling \$83,678.00, and unsecured priority claims totaling \$0.00. Accordingly, there are non-exempt assets available for distribution to Debtors' general unsecured creditors of \$83,678.00 (\$83,678.00 minus \$0.00). The Trustee estimates, based on a review and analysis of Debtors' schedules and claims filed to date, that Debtors have non-priority general unsecured claims totaling \$24,515.00. In order to meet the liquidation test of 11 U.S.C. §1325(a)(4), Debtors' plan must pay 100% plus Federal Judgement Rate of 0.15% to (\$83,678.00 divided by \$24,515.00) to Debtors' general unsecured creditors. Debtors' plan pays only 100%, and accordingly, it fails the liquidation test.

Third, Secured Creditor Deutsche Bank National Trust Company, objects to Debtors' plan as it does not provide for repayment of the debt owed to Secured Creditor. Secured Creditor further states that the plan does not propose a reasonable schedule and time period for the payment of amount owed and only proposes an extended twelve months of payments at \$1,280.00 which was the monthly payment amount operative prior to maturity. Secured Creditor notes that given Debtors' non-payment history, the fact that the loan has matured, and that Debtors have not obtained any agreement or indication that the loan will be modified, the plan is unreasonable. Debtors' Schedule I and J list net monthly income in the amount of \$1,815.00, and such amount is insufficient to fund the plan and fully provide for Secured Creditor's claim, which must be \$5,577.50 per month. As a result, Debtors' plan is not feasible. 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.

3. [21-23825](#)-B-13 ANGELINA/MIGUEL PEINADO MOTION TO INCUR DEBT  
[MMN](#)-3 Michael M. Noble 4-1-22 [[88](#)]

### **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). Opposition was filed. The court will address the merits of the motion at the hearing.

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

Debtors seek court approval to incur post-petition credit. Debtors seek to modify the loan with Deutsche Bank National Trust Company ("Creditor"), whose claim the plan provides for in Class 2. In the motion, Debtors state that they "seek to modify the loan with Franklin by capitalizing the interest and fees so that the principle increases to no more than \$334,650.11 at an interest rate of no more than 10.49%."

The motion is supported by the Declaration of Angelina Peinado. The Declaration states that Creditor is the servicer on Debtors' second mortgage for their residence with a loan which originated on March 12, 2007, when Peinado's husband an co-Debtor Miguel signed a note with Decision One Mortgage Company, LLC for \$140,056.00. Creditor shows that Debtors owe \$138,743.23 as of January 6, 2009, which was the last payment date according to Creditor. Debtors believe that they paid on this second mortgage with Decision One for "about one year" and "reduced the principle by a little more than \$1,000.00." Debtors state their finances have improved since last communicating with Creditor, and they believe they can reach an agreement with Creditor to modify the loan. Debtors submitted another request to modify their loan around March 30, 2022, and they seek to modify the loan with Creditor by capitalizing the interest and fees so that the principle increases to no more than \$334,650.11 at an interest rate of no more than 10.49%.

Creditor has filed an opposition to Debtors' motion to incur debt. In their opposition, Creditor acknowledges that Debtors have applied for a loan modification, but on April 6, 2022 a request for additional documents was issued with a deadline for reply of May 15, 2022. No preliminary offer, trial plan, or promises of modification have been extended to date, which means that Debtors' current motion is both speculative and premature. Creditor asserts that Debtors remain due for the January 2009 monthly mortgage payment and the loan obligation itself matured by the contract terms on April 1, 2022. Debtors have already been offered a trial loan modification providing for a down payment and a trial payment plan for six months, which the Debtors appealed and subsequently rejected. There has been no surety made by either party that a modification agreement offer will be made on this new application or that its terms would be agreed to by Debtors.

Given Creditor's opposition, the loan modification sought by Debtors appears to be speculative and premature. Until the parties agree upon a loan modification, the Debtors' motion is premature. The court will not force Creditor to grant a loan modification if the Debtors fail to qualify for modification or otherwise fail to properly avail themselves of the modification process.

The motion is denied without prejudice.

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

The court will issue an order.

4. [20-24933](#)-B-13 THOMAS/RENEE IRELAND MOTION TO INCUR DEBT  
[BSH](#)-2 Brian S. Haddix 5-3-22 [[42](#)]

### **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 grant the motion and continue the matter to May 24, 2022 at 1:00 p.m.**

The motion seeks permission to purchase a 2016 Honda Accord 4D Sedan ("Vehicle"), the total purchase price of which is \$27,156.07, with monthly payments of \$517.90. Debtors will trade in their 2003 Chevrolet Silverado as a down payment for the new debt, making the total loan amount for the debt \$25,156.07. The term for the loan will be 66 months. The new debt is a single loan incurred to purchase the Vehicle which is reasonably necessary for the maintenance or support of the Debtor or a dependent of the Debtor.

### **Discussion**

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion 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, May 20, 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 creditor 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 May 24, 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 May 24, 2022, at 1:00 p.m.

The motion is ORDERED CONDITIONALLY GRANTED and CONTINUED to May 24, 2022 at 1:00 p.m. for reasons stated in the minutes.

5. [22-20341](#)-B-13 RYAN CUSTODIO  
[RDG](#)-2 Thomas A. Moore

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
4-6-22 [[22](#)]

**Final Ruling**

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(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 sustain the objection and disallow the exemptions.

The Chapter 13 Trustee objects to the Debtor's use of both C.C.P. § 704.010 and C.C.P. § 703.140 et seq. to claim assets exempt. These code sections are mutually exclusive and may not be used together.

The Trustee's objection is sustained and the claimed exemption is disallowed.

The objection is ORDERED SUSTAINED and the claimed exemptions DISALLOWED for reasons stated in the minutes.

The court will issue an order.

6. [18-27085](#)-B-13 ANGELA EALY-HALE AND MOTION FOR RELIEF FROM  
[ASW](#)-1 DONNIE HALE AUTOMATIC STAY  
Peter G. Macaluso 4-14-22 [[55](#)]  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY 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). 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 hearing on Debtor's motion to May 31, 2022.**

Deutsche Bank National Trust Company ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 3443 Phelps St., Stockton, California, 95206, California (the "Property"). Movant has provided the Declaration of Pauline Kunz to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Kunz Declaration states that there are 2 post-petition payments in default totaling \$2,866.62.

Opposition has been filed by Angela Ealy-Hale and Donnie Hale ("Debtors") asserting they have cured the plan payments, thus giving the Trustee sufficient funds on hand to cure the post-petition delinquency. Debtors claim the delinquency in plan payments because as a Daycare provider, several children in their care were quarantined, causing them to miss the February and March payments, and that they have subsequently made these payments, in addition to the April payment. Dkt. 62. Debtors further assert that there has been an increase in the value of their home, which they claim is now worth \$560,000.00. Further, Debtors also dispute the amount owed to Movant, asserting they only owe \$505,000.00.

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 \$505,843.48 as stated in the Kunz Declaration and Schedule D filed by the Debtors. The value of the Property is determined to be \$330,000.00 as stated in Schedules A/B and D filed by Debtors.

### **Discussion**

The Debtors have submitted evidence that the payment default has been cured and that the Chapter 13 Trustee has sufficient funds to cure the default. Based on that evidence, the hearing is continued to May 31, 2022, to (1) allow the Trustee to make any necessary disbursement to cure any payment default to the secured creditor; and (2) allow the secured creditor to withdraw its motion upon payment by the Trustee. See 11 U.S.C. § 362(e).

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 CONTINUED to May 31, 2022 at 1:00 p.m. for reasons stated in the minutes.



7. [22-20097](#)-B-13      ARTHUR MENDOZA AND      MOTION TO CONFIRM PLAN  
[MRL](#)-1      CONSUELO LEYVA MENDOZA      4-7-22 [[25](#)]  
Mikalah R. Liviakis

**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.

8. [21-21810](#)-B-13 ANTHONY/KAMIE GAMBINI CONTINUED OBJECTION TO CLAIM OF  
[RDG](#)-1 Yasha Rahimzadeh INTERNAL REVENUE SERVICE, CLAIM  
NUMBER 8-1  
4-4-22 [[43](#)]

**Final Ruling**

This matter was continued from May 10, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, May 13, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 46, sustaining the objection to claim, shall become the court's final decision. The continued hearing on May 17, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

9. [21-23548](#)-B-13 SHAHAR JONES  
[RDG](#)-1 Peter G. Macaluso

CONTINUED OBJECTION TO CLAIM OF  
MARIA DE LOURDEZ VIDAL ROSAS,  
CLAIM NUMBER 8  
4-4-22 [[27](#)]

### **Final Ruling**

This matter was continued from May 10, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, May 13, 2022. A response was filed by Creditor Maria de Lourdez Vidal Rosas ("Creditor"). Dkt. 30.

In her response, Creditor acknowledges that her claim was filed after the deadline for filing proofs of claim for a non-governmental unit had already passed. Creditor has spoken with Debtor's attorney, and the Debtor has filed a new claim on May 4, 2022, claim # 9-1, on Creditor's behalf.

Though Creditor has filed a response as well as a new claim, the claim which was the basis of the instant objection, claim # 6-1, was filed late and is disallowed for that reason. The claim that the Debtor apparently filed on Creditor's behalf is also late and will also be disallowed.

Bankruptcy Rule 3004 permits a debtor to file a claim on a creditor's behalf when a creditor fails to timely file a claim; however, the debtor must file the proof of claim on the creditor's behalf within 30 days of the original bar date. With an original bar date here of December 22, 2021, that means the proof of claim that the Debtor's attorney filed on Creditor's behalf on May 4, 2022, is also late because it should have been filed no later than January 21, 2022. Accordingly, the May 4, 2022, claim, No. 9-1, is also disallowed for this reason.

Therefore, the court's conditional ruling at dkt. 32, sustaining the objection to claim, as modified herein, shall become the court's final decision. The continued hearing on May 17, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

10. [20-20381](#)-B-13 LOAY ELKOUSSY  
[GSJ](#)-2 Grace S. Johnson

CONTINUED MOTION TO SELL  
4-13-22 [[48](#)]

**Final Ruling**

This matter was continued from May 10, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, May 13, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 57, granting the motion to sell, shall become the court's final decision. The continued hearing on May 17, 2022, at 1:00 p.m. is vacated.

Debtor's attorney shall submit an order consistent with the Trustee's standard sale order. The order shall be approved by the Trustee.