

**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 18, 2021

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 18, 2021 at 1:00 p.m.

1. [21-20522](#)-B-13 LARRY REEVES MOTION TO CONFIRM PLAN
[JCK](#)-1 Kathleen H. Crist 3-23-21 [[14](#)]

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.

May 18, 2021 at 1:00 p.m.

2. [21-20437](#)-B-13 ANGELA WARE-PERKINS MOTION TO CONFIRM PLAN
 [HWW](#)-2 Hank W. Walth 4-12-21 [[27](#)]

CONTINUED TO 6/01/21 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF
CREDITORS SET FOR 5/26/21.

Final Ruling

No appearance at the May 18, 2021, hearing is required. The court will issue an order.

3. [11-46758](#)-B-13 ROBERT/LORI HARPELL
[DVD](#)-2 David S. Van Dyke

MOTION TO AVOID LIEN OF
SECURITY CREDIT SERVICES, LLC
4-12-21 [[75](#)]

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 to avoid lien.

This is a request for an order avoiding the judicial lien of Security Credit Services, LLC ("Creditor") against the Debtors' property commonly known as 1815 Lone Fox Court, Tracy, California ("Property").

A judgment was entered against Debtor Robert Harpell in favor of Creditor in the amount of \$9,839.73. An abstract of judgment was recorded with San Joaquin County on June 14, 2011, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of \$195,400.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C. The first mortgage recorded against the Property totals \$409,257.15.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will issue an order.

4. [11-49867](#)-B-13 GABRIEL/MARIA TAURO
[AF-2](#) Arasto Farsad

MOTION TO VALUE COLLATERAL OF
U.S. BANK / OCWEN
4-5-21 [[130](#)]

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 value the secured claim of U.S. Bank/Ocwen at \$0.00.

Debtors move to value the secured claim of second deed of trust holder U.S. Bank/Ocwen ("Creditor") pursuant to 11 U.S.C. § 506(a). This motion is filed to correct an inaccurately identified second lienholder listed in the initial "Motion to Value Real Property that is Collateral for Creditor Carrington Mortgage Services, Inc.'s Claim of \$97,500.00 Account Number #xxxx8291" filed on March 6, 2012, under dkt. 37. That motion to value was granted by the court on April 7, 2012, at dkt. 47.

Debtor seeks to value the Property at a fair market value of \$175,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some 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. It appears that Claim No. 11 filed by U.S. Bank/Ocwen is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of approximately \$196,300.00. Creditor's second deed of trust secures a claim with a balance of approximately \$97,231.72. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will issue an order.

5. [20-24477](#)-B-13 SUSANA SANTANA
[TMO](#)-3 T. Mark O'Toole

MOTION TO CONFIRM PLAN
4-6-21 [[67](#)]

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). 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. The Chapter 13 Trustee filed an objection but subsequently filed a motion to dismiss its objection. The Trustee's motion is granted. 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.

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.

7. [21-20762](#)-B-13 CHRISTOPHER ANTELLAS
[RDG-1](#) Michael K. Moore

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
4-15-21 [[21](#)]

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 a confirmation order, the court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtor has not provided the Trustee with a copy of his 2019 and 2020 income tax returns as requested. Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(i).

Second, Debtor's plan is not feasible under 11 U.S.C. §1325(a)(6). Debtor's pay advices provided to the trustee indicate retirement loans in the total amount of approximately \$155.00 per month. This payroll deduction is not included on Debtor's Schedule I.

The plan filed March 17, 2021, 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 reasons stated in the minutes.

The court will issue an order.