

**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: June 11, 2024

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

June 11, 2024 at 1:00 p.m.

- | | | | |
|----|---------------------------------------|-------------------|--------------------------------------|
| 1. | <u>23-90607</u> -B-13 | KRISTOPHER COOPER | OBJECTION TO CONFIRMATION OF |
| | <u>SSA</u> -3 | David C. Johnston | PLAN BY ROLLING F CREDIT UNION |
| | | | 5-8-24 [<u>64</u>] |

Final Ruling

Creditor Rolling F Credit Union ("Creditor") objects to confirmation of the plan filed January 7, 2024. That plan was already denied confirmation on May 14, 2025. See dkt. 74. Therefore, Creditor's objection to confirmation is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

June 11, 2024 at 1:00 p.m.

2. [24-90119](#)-B-13 TIMOTHY/CHERYL PORTER CONTINUED OBJECTION TO
[LGT](#)-1 Simran Singh Hundal CONFIRMATION OF PLAN BY LILIAN
Thru #3 G. TSANG
4-24-24 [[18](#)]

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). A 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.

Feasibility depends on the granting of a motion to value collateral of OneMain Financial Group, LLC. That motion was denied without prejudice at Item #3, SSH-1.

Therefore, the plan filed March 15, 2024, 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. [24-90119](#)-B-13 TIMOTHY/CHERYL PORTER MOTION TO VALUE COLLATERAL OF
[SSH](#)-1 Simran Singh Hundal ONEMAIN FINANCIAL GROUP, LLC
5-13-24 [[24](#)]

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 deny the motion to value collateral.

Debtors move to value the secured claim of OneMain Financial Group, LLC ("Creditor"). Debtors are the owner of a 2017 Ford Explorer ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$18,313.00 as of the petition filing date. As the owner, Debtors' opinion of value is 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. Claim No. 6-1 filed by OneMain Financial is the claim which appears to be the subject of the present motion.

Discussion

The Debtors provide no evidence as to the date the purchase-money loan was incurred. However, Claim No. 6-1 filed by OneMain Financial includes a Loan Agreement and Disclosure Statement that lists a date of September 25, 2021. Using this date, 910 days late calculates to March 23, 2024, which is after Debtors filed their petition on March 1, 2024. Therefore, the Vehicle was not incurred more than 910 days prior to filing of the petition.

The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value. Accordingly, the Debtors' motion is denied without prejudice.

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

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)(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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

5. [23-90537](#)-B-13 CHERYL PORTER
[24-9002](#) SCHIMMELFENNIG CAE-1
PORTER SCHIMMELFENNIG V. THE
BANK OF NEW YORK MELLON

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
3-15-24 [[1](#)]

Tentative Ruling

A motion to approve a settlement agreement between the parties in the adversary proceeding was originally set for hearing at 1:00 p.m. on June 11, 2024.

BY ORDER DATED AND FILED ON MAY 28, 2024, THE COURT ADVANCED THE HEARING ON THE MOTION TO APPROVE THE SETTLEMENT AGREEMENT TO 11:00 a.m. ON JUNE 11, 2024. Bankr. Dkt. 59.

ABSENT OPPOSITION AT THE TIME OF THE HEARING, THIS TENTATIVE RULING WILL BE THE COURT'S FINAL RULING WHEN THE MOTION TO APPROVE THE SETTLEMENT AGREEMENT IS HEARD.

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, and may appear at the hearing to offer oral argument.

The court's decision is to grant the motion to approve settlement agreement.

Debtor Cheryl Porter ("Plaintiff") requests that the court approve a compromise and settle competing claims and defenses with The Bank of New York Mellon, f/k/a The Bank of New York, as successor to JPMorgan Chase Bank N.A. as Indenture Trustee, on behalf of the holders of the Terwin Mortgage Trust 2006-4SL, Asset-Backed Securities, Series 2006-4SL ("BONY") and Specialized Loan Servicing LLC ("SLS") (collectively "Defendants"). Approval of the settlement agreement would resolve the adversary proceeding, no. 24-9002, between Plaintiff and Defendants regarding the amount owed on a home equity line of credit.

The settlement agreement ("Agreement") calls for Plaintiff to pay Defendants \$140,000.00 by wire transfer within 30 days of Plaintiff's receipt of this Agreement, fully executed by the Parties and entry of a bankruptcy court order approving the instant Agreement. Within 10 days of execution and bankruptcy court approval of this Agreement, Plaintiff shall file with the United States Bankruptcy Court, Eastern District of California, Modesto a request for dismissal of adversary proceeding, no. 24-9002, with prejudice. Within 30 days of Defendants' receipt of the payment, Defendants will submit for recording in the Official Records of Tuolumne County a reconveyance of the Deed of Trust. Specialized Loan Servicing LLC ("SLS") will distribute the proceeds in accordance with the Agreement.

Plaintiff and Defendants have resolved these claims and disputes, subject to approval by the court on terms and conditions summarized at dkt. 52.

Discussion

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Plaintiff argues that the four factors have been met. Plaintiff submits that approval of the Agreement is in the best interest of the Plaintiff as well as Defendants because it ultimately eliminates the possibility of protracted litigation, eases the Plaintiff's financial burden, and provides a meaningful recovery for the benefit of the SLS. The Agreement therefore represents a compromise between the parties that is fair and equitable and in the best interests of both parties.

Upon weighing the factors outlined in *A & C Properties* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the estate. The motion is granted.

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

The court will issue an order.

6. [24-90142](#)-B-13 RUBEN MORENO OBJECTION TO CONFIRMATION OF
[LGT](#)-1 Simran Singh Hundal PLAN BY LILIAN G. TSANG
5-22-24 [\[17\]](#)

CONTINUED TO 7/02/24 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 6/26/24.

Final Ruling

No appearance at the June 11, 2024, hearing is required. The court will issue an order.

7. [24-90158](#)-B-13 SEAN MOFFATT OBJECTION TO CONFIRMATION OF
[LGT](#)-1 Simran Singh Hundal PLAN BY LILIAN G. TSANG
5-16-24 [[12](#)]

CONTINUED TO 7/02/24 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 6/26/24.

Final Ruling

No appearance at the June 11, 2024, hearing is required. The court will issue an order.

8. [24-90167](#)-B-13 CHRISTINA TAFURI OBJECTION TO CONFIRMATION OF
[LGT](#)-1 Peter G. Macaluso PLAN BY LILIAN G. TSANG
5-16-24 [\[37\]](#)

CONTINUED TO 7/02/24 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 6/26/24.

Final Ruling

No appearance at the June 11, 2024, hearing is required. The court will issue an order.

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). A written reply has been filed to the objection.

All objections have been resolved and the court has determined that oral argument is not necessary. See Local Bankr. R. 1001-1(f), 9014-1(h). This matter will be decided on the papers. No appearance at the hearing is necessary.

The court's decision is to overrule the objection and confirm the plan.

Sun West Mortgage Company, Inc ("Creditor") objects to confirmation of the plan on grounds that it does not provide for arrears owed in the amount of \$1,788.33 (which consists of the Escrow Deficiency for Funds Advanced and Projected Escrow Shortage, dkt. 16, p. 6) and that Debtors monthly net income of \$400.38 is insufficient to fund the plan after accounting for the arrears owed to Creditor. See 11 U.S.C. §§ 1325(b)(5) and (a)(6).

Debtors filed a response stating that they have been paying the additional \$33.34 per month for the increase in escrow since October 1, 2023, when they received an escrow analysis. Furthermore, Debtors contend that their house payment is current, is not included in the plan payment, and is paid outside the plan and that, likewise, the escrow shortage should be allowed to be paid outside the plan. Debtors request that they continue to make the mortgage payment and the escrow shortage as a Class 4 claim directly to Creditor. The court finds continued payment to Creditor in Class 4 appropriate.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed April 1, 2024, is confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

10. [24-90133](#)-B-13 ALISON DEVINE
[LGT](#)-1 Simran Singh Hundal

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LILIAN
G. TSANG
5-8-24 [[17](#)]

Final Ruling

This matter was continued from June 4, 2024, to allow any party in interest to file a response by 5:00 p.m. Friday, June 7, 2024. Nothing was filed. Therefore, the court's conditional ruling at *dk.* 21, sustaining the objection, shall become the court's final decision. The continued hearing on June 11, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.