

**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: June 14, 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

**June 14, 2022 at 1:00 p.m.**

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1.    [19-25927](#)-B-13    TOBIAS GOMEZ    MOTION TO MODIFY PLAN  
     [RK-4](#)                Richard Kwun        4-20-22 [[150](#)]

**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 motion to August 16, 2022, at 1:00 p.m.**

The Chapter 13 Trustee filed an opposition based on several grounds. The first issue noted by the Trustee is that the Debtor is delinquent in the amount of \$2,025.00. This is based on the fact that Section 7 of Debtor's plan provides for plan payments of \$1,591.00 for months 30 and 31 (March/April 2022) and \$1,400.00 beginning April 2022. Through April 2022, month 31, these proposed plan payments total \$4,582.00, and Trustee records indicate through April 2022, Debtor has only remitted a total of \$2,557.00 in the months March 2022 through April 2022, and accordingly, Debtor is delinquent in the amount of \$2,025.00 under the proposed plan.

In his response, the Debtor asserts that Trustee has misconstrued Debtor's plan. Section 7.05 of the plan filed on April 20, 2022 states that the Debtor paid the Trustee \$1,591.00 for both month 30 and month 31, or alternatively this indicates the Debtor paid \$1,591.00 over that 60-day period. The plan does not state that the Debtor was to pay \$1,591.00 for month 30 and \$1,591.00 for month 31. Section 7.05 of Debtor's plan filed April 20, 2022 states that "As of 4/13/2022, the Debtor, after conversion to Ch. 13 has paid the Trustee \$1,591 for months 30 and 31", which appears to align with Debtor's contention. This resolves the basis of Trustee's first issue with Debtor's motion to modify.

The second issue noted by the Chapter 13 Trustee is that Debtor's ability to make the plan payment of \$625.00 is contingent upon a monthly contribution of \$800.00 from a son, as listed on Debtor's Schedule I at line 8h. Dkt. 155. However, Debtor has failed to file a declaration from his son stating the ability and willingness to financially assist Debtor.

In his response, the Debtor asserts that his son filed a declaration as to his \$800.00 per month contribution on March 20, 2022. Dkt. 140. This resolves the basis for Trustee's second issue with Debtor's motion to modify.

The final issue noted by Trustee is that Debtor has reclassified the Class 1 claim of Creditor Wells Fargo Bank N.A. to be paid outside of the plan as a Class 4 claim. The feasibility of Debtor's plan is contingent on the Court approving a permanent loan

**June 14, 2022 at 1:00 p.m.**  
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modification. Until the court enters an order on that motion, it cannot be determined whether Debtor's plan is feasible. Further, Creditor Wells Fargo N.A. has filed their own opposition to this motion, indicating the terms of the loan modification agreement are not final. Dkt. 156.

Debtor asserts in his response that the Debtor has made the three required trial loan modification payments namely for April, May, and June 2022, and that approval of the loan modification by this court is pending. Debtor requests that this motion for confirmation be continued for 60 days so that the loan modification can be ruled on by this court.

The motion is continued to August 16, 2022, at 1:00 p.m.

The motion is ORDERED CONTINUED to August 16, 2022, at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

2. [20-24627](#)-B-13 GINA TOSCANO  
[PGM-1](#) Peter G. Macaluso

MOTION TO REFINANCE  
5-12-22 [[26](#)]

### **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.

Debtor seeks court approval to refinance real property commonly known as 13521 Gypsum Way, Lathrop, California ("Property") with Equity Prime Mortgage, LLC ("Creditor"). Equity Prime Mortgage, LLC has agreed to a refinance that will provide to the Debtor cash to close in the amount of \$70,000.00 to pay off the plan, with net proceeds of approximately \$16,415.86 to be returned to the Debtor directly.. Debtor intends to use the proceeds to pay off approved unsecured creditors at 100% and discharge her Chapter 13 bankruptcy case. The term of the loan is 360 months at 5.375% fixed interest. The current monthly mortgage payment is \$1,500.20. The refinance proposes monthly payments of approximately \$2,295.13, which excludes escrow payments to property insurance and taxes.

The motion is supported by the Declaration of Gina Toscano. The Declaration affirms Debtor's desire to refinance the Property. Debtor intends to use the funds generated from the refinance to pay off her bankruptcy case and make needed repairs to her home, including new flooring, appliances, and paint.

The repayment of the new loan does not appear to unduly jeopardize Debtor's performance of the plan filed December 10, 2020. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion will be granted.

The Debtor that the following provisions be included in the order approving the sale of real property:

1. The refinance is approved provided all liens, if any, are paid in full in a manner consistent with the plan, notwithstanding relief of stay that has been entered.
2. The Trustee shall approve the escrow and title company to be used in connection with the transaction. The Trustee shall approve the estimated closing statement to be prepared in connection with the refinance, and when approved, disbursement may only be made in accordance with the approved estimated closing statement.
3. The Chapter 13 Trustee will demand sufficient proceeds from the sale to complete the Plan at 100%
4. Debtors will retain the balance of the proceeds, if any.

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

The court will issue an order.

3. [14-25132](#)-B-13 KAREN CLEARY  
[RLG-11](#) Robert L. Goldstein

MOTION TO AVOID LIEN OF NORCAL  
LEASING  
4-28-22 [[147](#)]

### **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.

This is a request for an order avoiding the judicial lien of Norcal Leasing ("Creditor") against the Debtor's property commonly known as 2020 Bridle Creek Circle, Tracy, California, 95377, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$13,768.81. An abstract of judgment was recorded with San Joaquin County on January 9, 2013 which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$250,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(3) in the amount of \$3,666.89 on Schedule C. All other liens recorded against the Property total \$269,821.57.

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 Debtor's 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. [20-24252](#)-B-13 CHRISTINA/RICHARD LOPEZ MOTION TO MODIFY PLAN  
[MKM-1](#) Michael K. Moore 5-4-22 [[45](#)]

### **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 not permit the requested modification and not confirm the modified plan.

First, Section 7.01 of Debtors' plan provides for plan payments of \$3,850.00 beginning May 2022. Debtors have failed to file supplemental Schedules I and/or Schedule J to support the plan payment. Without the updated schedules and pay advices if appropriate, it cannot be determined whether the proposed plan is feasible.

Second, Debtors' proposed plan provides for Jerry Ealker Construction as a Class 2 creditor with a secured claim amount of \$18,000.00, to be paid a dividend of \$515.00 per month at 4.75% interest. As of May 12, 2022, a claim from this creditor has not been filed. According to the Notice of Filed Claims, Debtors had until May 25, 2021 to file a claim on behalf of this creditor. Trustee is unable to make disbursements to Jerry Walker Construction for this claim.

Third, the total monthly payments to secured creditors is \$3,594.17 without Trustee compensation and expense, and with current Trustee compensation and expense, total \$3,936.66 per month. Debtor's plan payment is only \$3,850.00 per month. Accordingly, Debtor's plan is not feasible. 11 U.S.C. § 1325(a)(6). The plan payment would be sufficient if the added monthly dividend of \$515.00 for Jerry Walker Construction not be included, as a timely proof of claim was not filed.

Fourth, Debtors' plan fails to account for the forbearance arrears of \$3,546.36 (representing the months of April 2022 and May 2022) from Class 1 creditor Wells Fargo Bank, NA/Select Portfolio Servicing Inc. and how the forbearance arrears will be paid at the end of the forbearance period. Without knowing how these payments will be treated, it cannot be determined if Debtors' plan is feasible. 11 U.S.C. § 1325(a)(6). Additionally, Trustee is unable to retroactively administer the Notice of Forbearance Agreement as it was not filed until April 12, 2022 and includes the suspension of payments for the months March 2022 through May 2022. Trustee records indicate a total of \$31,638.04 has disbursed for the Class 1 mortgage payment, representing the months of October 2020 through March 2022.

Fifth, the Debtors' plan does not pass the liquidation test of 11 U.S.C. § 1325(a)(4). Confirmation of Debtors' current plan was contingent upon general unsecured creditors receiving 100% plus interest at the Federal Judgment Rate of 0.13% as provided for on the Order Confirming Plan. Dkt. 26. Debtors' proposed plan is absent this condition.

The modified plan does not comply with 11 U.S.C. §§ 1322 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. [20-20381](#)-B-13 LOAY ELKOUSSY MOTION TO SELL  
[GSJ-3](#) Grace S. Johnson 5-24-22 [[60](#)]

### **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 to sell and continue the matter to June 21, 2022, at 1:00 p.m.**

The Bankruptcy Code permits Chapter 13 debtors 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 2459 Felino Lane, Lodi, California, 95240 ("Property").

Proposed purchasers Sohila Bodner and Nika Bodner have agreed to purchase the Property for \$460,000.00. The sale price for the Property is \$460,000.00 with an initial deposit amount of \$5,000.00. The balance due to Shellpoint Mortgage Servicing is approximately \$288,707.84, and the balance to be used to pay off the Chapter 13 bankruptcy at 100% is approximately \$48,805.00.

The Debtor that the following provisions be included in the order approving the sale of real property:

1. The sale is approved provided all liens, if any, are paid in full in a manner consistent with the plan. Shellpoint Mortgage Servicing will be paid in full subject to a proper payoff quote.
2. The Trustee must approve of the Title Company and Escrow Company to be used in connection with the sale. His approval shall not be unreasonably withheld.
3. The sale is approved provided that the Trustee approves the estimated closing statement to be prepared in connection with the sale, and when approved, disbursements may only be made in accordance with the approved closing statement.
4. \$48,805.00 of the proceeds from the sale will be paid directly to the Trustee from escrow. Debtor will receive the balance of the proceeds directly from escrow.
5. The unsecured creditors will be paid 100% of their claims.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate. The motion is conditionally 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, June 17, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 3007-1(b)(2). 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 June 21, 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 June 21, 2022, at 1:00 p.m.

### **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 not permit the requested modification and not confirm the modified plan.

First, Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 7, the non-standard provisions for Section 2.01 of Debtor's plan proposes a monthly payment of \$1,285.00 beginning May 2022 and \$4,109.00 beginning August 2022. Debtor has failed to file supplemental Schedules I and/or Schedule J to support the plan payment. Without the updated schedules, it cannot be determined whether the proposed plan is feasible

Second, Section 7, the non-standard provisions for Section 2.01 of Debtor's plan provides for plan payments of \$1,285.00 beginning May 2022 for three months and \$4,109.00 beginning August 2022. Debtor has failed to provide admissible evidence that the plan is mathematically feasible. Trustee's calculations indicate that Debtor's average plan payment will need to be at least \$4,354.00 for Debtor's plan to be feasible as paying unsecured creditors 100% plus interest at the Federal Judgment Rate of 2.55%, the amount needed to pass the liquidation test.

Third, Debtor's plan is not feasible. As of May 2022, the balance of the attorney fees owed totals \$950.00 and there are 23 months remaining in the plan term. The monthly dividend is proposed at \$0.00. Trustee's calculations indicate that a monthly dividend of \$41.30 is needed to pay in full in the 23 months remaining in the plan term.

Fourth, Debtor's Motion to Confirm, Declaration and Modified Plan state that Debtor's forbearance will end in July 2022 and mortgage payments will resume in August 2022, however, the Notice of Forbearance Agreement filed by Class 1 creditor Bank of America NA states that Debtor will resume mortgage payments beginning on June 1, 2022, and will be required to cure the delinquency created by the forbearance period. Debtor's plan fails to account for the forbearance arrears of \$16,426.92 (representing the months of December 2021 through May 2022) and how the forbearance arrears will be paid at the end of the forbearance period. Without knowing how these payments are to be treated, it cannot be determined if Debtor's plan is feasible. 11 U.S.C. § 1325(a)(6).

Fifth, Debtors' motion fails to allege all significant factual matters under 11 U.S.C. § 1325(a)(1)-(9). The motion to confirm may not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based.

Sixth, the Debtor is delinquent in the amount of \$3,991.00. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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



The court will issue an order.

7. [22-20260](#)-B-13 MELITA BELL  
[RDG-1](#) Kathleen H. Crist

CONTINUED OBJECTION TO CLAIM OF  
WHEELS FINANCIAL GROUP LLC,  
CLAIM NUMBER 8  
5-4-22 [[17](#)]

**Final Ruling**

This matter was continued from June 7, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, June 10, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 20, sustaining the objection to claim, shall become the court's final decision. The continued hearing on June 14, 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.

8. [21-24098](#)-B-13 JOHN FORDON  
[RJ-4](#) Richard L. Jare

CONTINUED MOTION TO VALUE  
COLLATERAL OF WHEELS FINANCIAL  
GROUP, LLC  
5-17-22 [[52](#)]

**Final Ruling**

This matter was continued from June 7, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, June 10, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 59, granting the motion, shall become the court's final decision. The continued hearing on June 14, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.