

**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 21, 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
Modesto, California

June 21, 2022 at 1:00 p.m.

1. [19-90805](#)-B-13 KRISTOPHER KLINE MOTION TO SELL
[MSN](#)-3 Mark S. Nelson 6-6-22 [[74](#)]

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 28, 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). Debtor proposes to sell the property described as 14201 Tim Bell Road, Waterford, CA ("Property").

Proposed purchasers Jeffrey Breshears and Gabriela Breshears have agreed to purchase the Property for \$700,000.00. The sale is an arms' length transaction and the sale price is the fair market value of the Property. Debtor will turn over the net proceeds of \$147,000.00, or the amount necessary, from the sale of the Property to the Trustee to pay off the plan in full. The Debtor intends to include the Trustee's standard provisions for the sale of real property. The Debtor also requests waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 6004(h).

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 24, 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 28, 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 28, 2022, at 1:00 p.m.

June 21, 2022 at 1:00 p.m.
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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 second amended plan.

First, Debtor's plan proposes monthly payments of \$4,992.38 per month in months 1 through 8. However, based on the monthly payments to secured creditors for months 1 through 5 and including the Trustee's compensation and expense, the plan payment should be \$5,017.65 per month for months 1 through 5. The Debtor's plan is not feasible pursuant to 11 U.S.C. § 1325(a)(6).

Second, Debtor's plan proposes monthly payments of \$4,992.38 per month in months 1 through 8. However, based on the monthly payments to secured creditors for months 6 through 8 and including the Trustee's compensation and expense, the plan payment should be \$5,202.20 per month for months 1 through 5. The Debtor's plan is not feasible pursuant to 11 U.S.C. § 1325(a)(6).

Third, the Debtor's plan is a 60-month plan but the average monthly dividend proposed for the Class 2(A) claim of Mariposa County Tax Collector will take 77 months to pay. 11 U.S.C. § 1325(a)(6).

Fourth, the income and expenses associated with the rental property located at 19425 Ferretti Drive, Groveland, CA are omitted from her Schedules I and J and the Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period (Means Test). Without all of Debtor's income properly listed on her schedules and forms, it cannot be determined whether Debtor's plan has been proposed in good faith and complies with 11 U.S.C. §1325

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. [21-90522](#)-B-13 KEVIN JORDAN
[RDG-2](#) Shane Reich

CONTINUED MOTION TO DISMISS
CASE
5-13-22 [[33](#)]

Final Ruling

The Debtor requested additional time to file an amended plan and the court provided the Debtor through June 21, 2022, at 1:00 p.m. to file the amended plan. See dkt. 42. A review of the court's docket shows that no plan has been filed. If a plan is not timely filed, the motion shall be granted and the case will be dismissed.

The court will issue an order.

4. [21-90441](#)-B-13 SHARON HAMILTON MOTION TO SELL
[DCJ-4](#) David C. Johnston 5-10-22 [[69](#)]
Thru #5

Final Ruling

No appearance at the hearing is necessary. The case was dismissed on June 15, 2022.
The motion to sell is denied as moot.

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

The court will issue an order.

5. [21-90441](#)-B-13 SHARON HAMILTON MOTION TO CONFIRM PLAN
[DCJ-5](#) David C. Johnston 5-10-22 [[75](#)]

Final Ruling

No appearance at the hearing is necessary. The case was dismissed on June 15, 2022.
The motion to confirm plan is denied as moot.

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

The court will issue an order.

6. [22-90095](#)-B-13 CHERYL PORTER OBJECTION TO DEBTOR'S CLAIM OF
[RDG-2](#) SCHIMMELFENNIG EXEMPTIONS
Gordon G. Bones 5-17-22 [[22](#)]

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) or (a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.