

**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: July 7, 2020

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

July 7, 2020 at 1:00 p.m.

1. [20-20913](#)-B-13 KEITH ARCHIBALD MOTION TO CONFIRM PLAN
[FF-2](#) Gary Ray Fraley 5-11-20 [[28](#)]

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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined 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 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 not confirm the first amended plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,172.00, which represents approximately 2 plan payments. An additional payment of \$586.00 will be due by the date of the hearing on this matter. 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).

Second, it is unclear whether the Debtor will be able to make payments called for by the plan. The Debtor admitted at the meeting of creditors that he is without work due to COVID-19 and it is unclear whether he has begun work and what that work might be.

Third, the Debtor has not provided the Trustee with a copy of two years of tax returns, 6 months bank statements, proof of license and insurance, or written statements that no such documentation exists.. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(I) and Fed. R. Bankr. P. 4002(b)(3).

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.

July 7, 2020 at 1:00 p.m.

Final Ruling

The motion 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 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 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 permit the requested modification and confirm the modified plan.

The Chapter 13 Trustee objects to confirmation on grounds that the plan payment for months 13-84 does not equal the aggregate of Trustee's fees and monthly amounts. The Trustee does not oppose the Debtor correcting this issue in an order confirming, either by increasing the plan payment to \$1,282.00 a month or lowering the administrative expenses to Section 3.06 to \$110.00 a month.

The Debtor filed a response stating that he will increase plan payments to \$1,282.00 per month.

The modified 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.

3. [20-20218](#)-B-13 KATHY CUNNINGHAM
[AP-2](#) Peter G. Macaluso

U.S. BANK NA VS. DEBTOR

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
5-29-20 [[36](#)]

DISMISSED: 6/6/20

Final Ruling

The case having been dismissed, the motion for relief from stay filed pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) is dismissed as moot.

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

The court will issue an order.

4. [20-21919](#)-B-13 DENNIS ROBBINS
[DPC](#)-2 Michael O'Dowd Hays

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
5-20-20 [[20](#)]

WITHDRAWN BY M.P.

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) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined 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 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 not confirm the amended plan.

First, this case appears to be a non-business case given that the Debtor's main source of income is as a state employee, there is no business listed on Schedule A/B, and there isn't any significant income listed on Schedule I.

Second, the Debtor fails to means test based on amounts listed on Form 122C-2. The Debtor's disposable income is not being applied to make payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B). Form 122C-2 shows that the Debtor's monthly disposable income is \$1,298.00 and the Debtor must pay no less than \$77,88.00 to unsecured non-priority creditors.

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.

Final Ruling

The motion 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 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 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 permit the requested modification and confirm the modified plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that plan payments need to be corrected to reflect the correct amount that the Debtors have already paid into the plan, and that the modified plan is silent as to whether the Debtors are current or delinquent on mortgage payments since they are moving their mortgage from Class 4 to Class 1.

Debtors filed a response and supporting declaration stating that they can correct the plan payments in the order confirming and that they are current on mortgage payments, which they had been paying directly to their lender. The Debtors further state that they are amenable to working with the Trustee to adjust language in the order confirming to accurately reflect Debtor's payments.

The modified 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.

7. [20-22424](#)-B-13 MOHAMMED TAMIK AND SADRUL MOTION TO VALUE COLLATERAL OF
[WW-1](#) NISHA PATELCO CREDIT UNION
Mark A. Wolff 5-27-20 [[19](#)]

Final Ruling

The motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). However, there appears to be insufficient service of process on Patelco Credit Union. The address used by the Debtors does not appear on the California Secretary of State website nor does it match the address that notices are to be sent as listed in Claim No. 15-1. Therefore, the court's decision is to deny the motion without prejudice.

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

The court will issue an order.

8. [20-22238](#)-B-13 JOHN CLARES
[JSO](#)-1 Jeffrey S. Ogilvie

MOTION TO AVOID LIEN OF
CITIBANK, N.A.
6-8-20 [[13](#)]

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 by any creditors. A non-opposition was filed by the Chapter 13 Trustee. 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 Citibank, N.A. ("Creditor") against the Debtor's property commonly known as 7619 Camino Vista, Shingletown, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$16,735.25. An abstract of judgment was recorded with Shasta County on January 18, 2012, which encumbers the Property. There are no other liens against the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$67,500.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000.00 on Schedule C.

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.

9. [20-22143](#)-B-13 JODI/ROBERT GALLAGHER CONTINUED MOTION TO VALUE
[MC-2](#) Muoi Chea COLLATERAL OF TOYOTA MOTOR
CREDIT CORPORATION
6-8-20 [[25](#)]

Final Ruling

This matter was continued from June 23, 2020, to allow any party in interest to file an opposition or response to the Debtors' motion to value collateral of Toyota Motor Credit Corporation. See dkt. 32, 35. No opposition or response was timely filed. Therefore, the court's conditional ruling granting the motion to value shall become the court's final decision. The July 7, 2020, 1:00 p.m. hearing is vacated.

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

The court will issue an order.

Final Ruling

The motion has been set for hearing on the notice required by 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). The defaults of the non-responding parties are entered.

The court has determined 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 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 deny the motion to sell.

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 1836 Beverly Way, Sacramento, California ("Property"). The Property has a pending offer for \$574,000.00. The net proceeds of this sale are estimated at \$84,938.06, which Debtor states in his response should be held in an interest bearing account pursuant to Debtor's homestead to be used to purchase real property in Tennessee within 180 days of the sale.

The Chapter 13 Trustee filed an objection stating that Debtor has claimed a homestead exemption in the amount of only \$75,000.00. Dkt. 1, p. 18. Therefore, any sales funds in excess of this amount should be disbursed to unsecured creditors. Debtor's response, dkt. 30, does not address this issue.

Creditor Home Point Financial Corporation filed a conditional non-opposition to the Debtor's motion to sell. Creditor requests that its deed of trust attach to the sale proceeds, the deed of trust shall be paid in full from the sale proceeds through escrow, in the event that the sale of the Property does not take place, Creditor shall retain its lien for the full amount due under the note and deed of trust, and Creditor's claim shall not be surcharged in any way with the costs of the sale, administrative claims, or other costs and expenses in connection with the sale of the Property.

Since the Debtor has not provided any legal authority as to why sales funds in excess of the exemption amount should go to him rather than to unsecured creditors, the court determines that the proposed sale is not in the best interest of the estate.

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

The court will issue an order.

11. [20-20759](#)-B-13 MALIK JOHNSON OBJECTION TO CLAIM OF REVIVER
[MJD](#)-3 Matthew J. DeCaminada FINANCIAL, LLC, CLAIM NUMBER 2
5-19-20 [[48](#)]

DISMISSED: 6/24/20

Final Ruling

The case having been dismissed, the objection to claim is dismissed as moot.

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

The court will issue an order.

12. [18-27962](#)-B-13 GUILLERMO MIRALRIO
[RPZ](#)-1 W. Steven Shumway

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-5-20 [[56](#)]

CITIBANK, N.A. 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 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 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 matter will be continued to **August 11, 2020, at 1:00 p.m.**

Citibank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1415 G Street, Rio Linda, California (the "Property"). Movant has provided the Declaration of Heather Johnson to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Johnson Declaration states that there are 4 post-petition payments in default totaling \$6,382.30. Creditor's supporting papers shows 17 pre-petition payments in default totaling \$28,857.13.

Debtor filed an opposition requesting to either deny or continue the motion for relief from stay so that it could be heard in conjunction with the confirmation hearing of Debtor's modified plan filed June 23, 2020. Debtor states that he is behind on mortgage payment due to his landscaping business being adversely affected by COVID-19. Debtor states that many of his clients could no longer afford a gardener or have taken up landscaping upon themselves to save costs. Debtor states that since restrictions have now relaxed, he has been able to pick up his landscaping work. Debtor states that his modified plan provides for the missed payments to Creditor and that his Property is necessary for an effective reorganization since his landscaping equipment is stored and maintained at his home.

The matter will be continued to August 11, 2020, at 1:00 p.m. to be heard in conjunction with Debtor's motion to confirm modified plan.

The motion is ORDERED CONTINUED to August 11, 2020, at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

13. [14-28177](#)-B-13 PAUL/LEE BOULOS
[20-2094](#) JCW-1
BOULOS ET AL V. U.S. BANK N.A.
ET AL

MOTION TO DISMISS ADVERSARY
PROCEEDING/NOTICE OF REMOVAL
6-1-20 [[11](#)]

ADVERSARY PROCEEDING
DISMISSED: 6/18/20

Final Ruling

The adversary proceeding having been dismissed, the motion to dismiss complaint pursuant to Rule 12(b) (6) is dismissed as moot.

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

The court will issue an order.

14. [20-20883](#)-B-13 MARCUS/DARLENE MITCHELL MOTION FOR RELIEF FROM
[JHK](#)-1 Mikalah R. Liviakis AUTOMATIC STAY
5-26-20 [[36](#)]

AMERICREDIT FINANCIAL
SERVICES, INC. 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 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 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 grant the motion for relief from stay.

AmeriCredit Financial Services, Inc. dba GM Financial ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Chrysler 300 (the "Vehicle"). The moving party has provided the Declaration of Lorenzo Nunez to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Nunez Declaration states that there are 2 pre-petition payments and a partial pre-petition payment in default totaling \$1,093.72. Moreover, Debtors' plan filed April 11, 2020, that was confirmed on May 20, 2020, provides the surrender of the Vehicle in Class 3.

The Chapter 13 Trustee has filed a response reiterating that the aforementioned plan provides for the surrender of the Vehicle.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtors and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).]

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or

successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The court will issue an order.