

**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: July 18, 2023**

**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

**July 18, 2023 at 1:00 p.m.**

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1.    [23-90010](#)-B-13    MARIA NAVARRO    MOTION TO VACATE  
      [CRH](#)-2            T. Mark O'Toole       6-28-23 [[90](#)]  
      **Thru #3**

**Final Ruling**

The relief requested in this motion is the same as the relief requested in the motion filed at Docket 96, CRH-3, which was denied in a memorandum decision and order entered on July 5, 2023. See dkts. 104, 106. This motion, CRH-2, and its related documents, Dockets 90-94, are therefore duplicative and are ORDERED STRICKEN as such.

The court will enter an order.

2.    [23-90010](#)-B-13    MARIA NAVARRO    MOTION TO VACATE  
      [CRH](#)-3            T. Mark O'Toole       6-29-23 [[96](#)]

HEARING VACATED PER DKT. 104.

3.    [23-90010](#)-B-13    MARIA NAVARRO    MOTION TO VACATE  
      [CRH](#)-4            T. Mark O'Toole       6-29-23 [[100](#)]

HEARING VACATED PER DKT. 107.

**July 18, 2023 at 1:00 p.m.**

4. [20-90613](#)-B-13 OVIDIO/ANGELICA BARAHONA MOTION TO MODIFY PLAN  
[BSH](#)-5 Brian S. Haddix 5-22-23 [[96](#)]

### **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.

The Debtors' plan payments provide for decreased and then increased plan payments to \$2,053.00 for the remaining 13 months of the plan. Debtors state that the purpose of the modified plan is to "suspend delinquencies and adjust the dividend to the Class 2 claims and general unsecureds due to Debtor 1 no longer being employed in a second job." However, the Debtors' declarations are silent as to how they will be able to increase their plan payments as proposed, whether "Debtor 1" will obtain new employment, and who "Debtor 1" actually is. The Debtors also have not filed supplemental schedules or pay advices to show that they can afford an increase in plan payments. The Debtors' plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3) and the plan is not feasible under 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.

### Final Ruling

Before the court is a *Motion to Avoid Judicial Lien That Impairs an Exemption to Which the Debtor is Entitled* filed by Debtor Nicole Marie Damin ("Debtor"). Debtor's ex-husband, Christopher Lloyd Damin ("Creditor"), filed an opposition. The Debtor filed a reply. The evidentiary record closed with the filing of the reply. See Local Bankr. R. 9014-1(f) (1) (C).

The court has reviewed the motion, opposition, reply, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket and the claims register. See Fed. R. Evid. 201(c). Because the hearing will be continued, oral argument is not necessary. See Local Bankr. R. 1001-1(c), 9014-1(h).

This matter will be continued to **September 19, 2023, at 1:00 p.m.**

Debtor seeks to avoid Creditor's \$87,287.16 (according to Claim 4-1) judicial lien on her home at 9136 Cliff Court, Valley Springs, CA ("Property"). Creditor's lien arises from an in-court settlement agreement that awarded Creditor what he describes as an "equalization payment" for transferring the Property, the marital home, to the Debtor in their divorce proceedings. Debtor asserts that the lien impairs her \$465,000 exemption in the Property. Debtor values the Property at \$628,390. The Property is also encumbered by a first deed of trust in the amount of \$304,980.75.

Creditor filed an opposition asserting there are material disputed facts: (1) the value of the Property which Creditor asserts to be \$750,000; (2) whether the Debtor is liable to Creditor pursuant to 11 U.S.C. §§ 523(a)(2), (5), or (6); and (3) whether the Debtor's exemption is limited by 11 U.S.C. § 522(q). Creditor requests that the court set appropriate deadlines to determine the material disputed facts as stated above, and to rule on the proper exemption amount.

The Debtor filed a reply stating that nothing the Creditor has presented should deny the granting of the motion to avoid the lien. The court disagrees.

There is no disputed material fact regarding the value of the Property. (Opp. DMF #1). Debtor asserts that, in her opinion, the Property is valued at \$628,390. Creditor asserts that, in his opinion, it is worth \$750,000. Problem is, Creditor does not own the Property. According to his declaration filed with the opposition, the purpose of the equalization payment he received in the divorce proceeding was to effectuate a complete transfer of the Property to his ex-wife, the Debtor. Creditor's opinion of the Property's value is therefore worthless and, as such, it is given no weight. Inasmuch as Creditor has submitted no other evidence of the Property's value, that leaves Debtor's opinion as the owner of the Property as the only evidence of the Property's value. And in the absence of contrary evidence, the court accepts the Debtor's opinion of the Property's value, as conclusive for purpose of the motion. *Enewally v. Washington Mutual Bank*, 369 F.3d 1165, 1174 (9th Cir. 2004). The Property is therefore valued at \$628,340 for purposes of the motion.

There is no disputed material fact regarding the nondischargeability of the equalization payment. (Opp. DMF #3). An equalization payment does not fall under 11 U.S.C. § 523(a)(5). *In re Okrepka*, 533 B.R. 327, 334 (Bankr. D. Kan. 2015). And even if somehow it could, Creditor submitted no evidence that the purpose and effect of the equalization payment was to provide for his support. *Id.* Nor does Creditor even make that allegation. In fact, the opposite is true. By Creditor's own admission, the equalization payment was intended to be, and was to effectuate, a property transfer which means it is not nondischargeable under § 523(a)(5). See *In re Brown*, 2004 WL 5846713, \*5 (Bankr. N.D. Ga. July 29, 2004).

The only potential dispute arises under Opp. DMF 2, 4, and 5. Creditor asserts that the Debtor is liable to him for a debt (presumably the equalization payment as it is the

**July 18, 2023 at 1:00 p.m.**

only debt owing Creditor identified) under 11 U.S.C. §§ 523(a)(2) and/or (a)(6). Liability under either subsection of § 523(a) has the potential to limit the homestead exemption to \$189,050 under 11 U.S.C. § 522(q)(1)(B)(ii) without regard to the 1215-day time period of 11 U.S.C. § 522(p).<sup>1</sup> See *In re Oliver*, 649 B.R. 206, 212 (Bankr. E.D. Cal. 2023). As further explained in *Oliver*:

The syntax of the two subsections reveals that the cross-references in § 522(q)(1) to paragraphs (A), (B), (C), and (D) of § 522(p)(1) operate merely to designate the property to which the permanent cap of § 522(q) applies. Specifically, the property affected by a § 522(q) cap is the same property that is subject to the § 522(p)(1) 1215-day temporary cap.

The cross-references do not, however, tether § 522(q) to 1215-day provision of § 522(p) in any other respect. The § 522(q) exemption cap applies to all homesteads wherever situated.

*Id.*

The problem here is that Creditor has not filed an adversary proceeding (his declaration refers to one but none has been found) that alleges claims against the Debtor under § 523(a)(2), § 523(a)(6), or any other theory of wrongful conduct that may trigger the application of § 522(q)(1)(B)(ii). Another problem is that the type of conduct that may trigger the application of § 522(q)(1)(B)(ii) is largely undeveloped and there may be instances other than those included in § 523(a) that qualify. *Oliver*, 649 B.R. at 213. A further problem is that the time to file § 523(a)(2) and/or (a)(6) complaint, and thus to allege additional claims that may lie outside the scope of both but within the reach of § 522(q)(1)(B)(ii), does not expire until September 11, 2023. See Dkt. 15. And still yet another problem is that the time set for filing a § 523(a)(2) and/or (a)(6) complaint may not be shortened. See Fed. R. Bankr. P. 4007(c), 9006(c)(2). These circumstances leave the court with two options: (1) deny the motion without prejudice; or (2) continue the hearing. The court elects the latter.

The court elects to continue this hearing because the potential application of § 522(q) makes a difference. The example is as follows under § 522(f)(2):

**§ 522(q) is Inapplicable**

Judgment Lien:	\$ 87,287
1 <sup>st</sup> DOT:	\$304,980
Exemption:	<u>\$465,000</u>
	\$857,267
Less Value:	<u>\$628,340</u>
Impairment:	\$228,927

**§ 522(q) is Applicable**

Judgment Lien:	\$ 87,287
1 <sup>st</sup> DOT:	\$304,980
Exemption:	<u>\$189,050</u>
	\$581,317
Less Value:	<u>\$628,340</u>

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<sup>1</sup>11 U.S.C. § 522(q)(1)(B)(ii) states in relevant part as follows":  
(q)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate \$189,050 if-

(B) the debtor owes a debt arising from-

(ii) fraud, deceit, or manipulation in a fiduciary capacity[.]

Impairment:        \$(47,023)

That said, the court cautions Creditor and his attorney that it will not tolerate tactical delay for purposes of gaining an advantage or for use as a bargaining chip. Should Creditor and his attorney elect to proceed with an adversary proceeding in an effort to limit the Debtor's exemption under § 522(q)(1)(B)(ii) both should be prepared to allege detailed factual allegations of the type of conduct necessary to trigger the statute with regard to the equalization payment. The court makes this statement because in his declaration filed with the opposition (and filed under penalty of perjury) Creditor states that the debt at issue, *i.e.*, the equalization payment, is the result of an "in-court settlement agreement . . . after trial on December 14, 2016." Dkt. 21 at ¶ 4. The court is hard-pressed to comprehend how the Debtor engaged in wrongdoing with respect to the equalization payment when the debt arises from what appears to be a court-supervised and court-approved settlement agreement after trial.

The point here is that Creditor and his attorney should carefully consider whether to proceed and, if they choose to do so, what they allege. If claims of wrongdoing by the Debtor turn out to be baseless, frivolous, or without merit, or if the court determines that Creditor and his attorney unduly and purposefully delayed the administration of this Chapter 13 case to pressure the Debtor into some sort of settlement, Creditor and his attorney will likely pay a heavy financial price.

The hearing is ORDERED CONTINUED to September 19, 2023, at 1:00 p.m.

The court will issue an order.

6. [20-90663](#)-B-13 JUAN DIAZ AND SUPINDER MOTION TO MODIFY PLAN  
[BSH](#)-3 LIDHAR 5-22-23 [[65](#)]  
Brian S. Haddix

### **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, the Debtors' plan payments provide for decreased and then increased plan payments back to \$1,920.00. Debtors state in their declarations that the purpose of the modified plan is to adjust the suspended delinquencies and provide for a new dividend because Debtor 1 experienced health issues . . . ." The declarations are unclear whether the health issues have resolved or persist, and it is unclear who "Debtor 1" is. The Debtors also have not filed supplemental schedules to support the proposed plan payments. The plan is not feasible under 11 U.S.C. § 1325(a)(6)

Second, the proposed plan has omitted a provision in which the Debtors are to provide "copies of their State and Federal income tax returns to the trustee on or before April 30 of each year during the pendency of this case, and modify the plan if appropriate," which was indicated in the order confirming plan. Dkt. 48. The Debtors also have not provided copies of their 2022 state and federal income tax returns to the Chapter 13 Trustee as of this date. The Debtors' plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

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.

**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 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 grant 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. Debtors propose to sell the property described as 3601 Veneman Avenue North, Modesto, California ("Property").

Proposed purchasers Roger Altadonna and Theresa Altadonna have agreed to purchase the Property for \$425,000.00. The sale of this Property will pay off Debtors' plan in full to creditors, with 100% to allowed general unsecured creditors. Debtors intend to turn over the \$323,000.00 in net proceeds from the sale of the Property to the Chapter 13 Trustee.

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 granted.

Debtors' attorney shall submit an order consistent with the Trustee's standard sale order. The order shall be approved by the Trustee.

8. [18-90792](#)-B-13 BRIAN BERGMANN-CARLSON MOTION FOR RELIEF FROM  
[KMB](#)-1 AND JENNIFER CARLSON AUTOMATIC STAY  
Matthew M. Spielberg 6-8-23 [[55](#)]  
U.S. BANK NATIONAL  
ASSOCIATION VS.

CONTINUED TO 8/22/23 AT 1:00 P.M. TO PROVIDE DEBTORS AND U.S. BANK NATIONAL ASSOCIATION  
ADDITIONAL TIME TO FILE AN ADEQUATE PROTECTION AGREEMENT.

**Final Ruling**

No appearance at the July 18, 2023, hearing is required. The court will issue an  
order.