

**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: August 8, 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
Sacramento, California

August 8, 2023 at 1:00 p.m.

1. 18-24819 -B-13 JAVIER CONTRERAS SMJ -4 Scott M. Johnson	OBJECTION TO CLAIM OF CHRYSLER CAPITAL/PERITUS PORTFOLIO SERVICES II, LLC, CLAIM NUMBER 4 6-6-23 [69]
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Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant 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 sustain the objection to Claim No. 4 of Chrysler Capital/Peritus Portfolio Services II, LLC and allow the claim as secured in the amount of \$17,522.98.

Debtor requests that the court reduce the claim of Chrysler Capital/Peritus Portfolio Services II, LLC ("Creditor"), Claim No. 4, to a secured amount of \$17,552.98. The Creditor has listed its claim as secured in the amount of \$35,712.03. The claim was bifurcated with \$21,550.00 listed as the secured amount of the claim, and \$14,162.03 as the unsecured amount of the claim. The claim was secured against a 2014 Dodge Challenger. Debtor's modified plan filed October 8, 2021, indicated Debtor's intent to surrender the collateral.

According to the Debtor, two years have passed since the Debtor surrendered the vehicle and Creditor has not amended or withdrawn its claim. To date, the Chapter 13 Trustee has paid a total of \$17,552.98 in principal payments and \$1,622.37 in interest to Petrius on account of Claim No. 4. Debtor asserts that the vehicle had an approximately value of \$20,000.00 at the time of surrender and, if the claim objection is not sustained, the Creditor will be unjustly and unduly rewarded since it would receive funds through plan as a secured creditor, funds from the sale of the collateral, and funds on its "zombie" unsecured claim through the chapter 13 plan.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim."

August 8, 2023 at 1:00 p.m.

Local Bankr. R. 3007-1(a).

The court finds that the Debtor has satisfied its burden of overcoming the presumptive validity of the claim. Based on the evidence before the court, the Creditor's claim is secured in the amount of \$17,522.98. The objection to the proof of claim is sustained.

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

The court will issue an order.

2. [20-23025](#)-B-13 RAMON PADILLA
[SKI](#)-1 T. Mark O'Toole

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-26-23 [[123](#)]

SANTANDER CONSUMER USA INC.
VS.
DEBTOR DISMISSED: 7/13/23

Final Ruling

The case having been dismissed on July 13, 2023, the motion for relief from automatic stay is denied as moot.

The motion is ORDERED DENIED AS MOOT 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 debtor 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 2938 Beecher Road, Stockton, California ("Property").

Proposed purchasers are Debtor's sons Daniel Alvarado and Jesse Alvarado, who have agreed to purchase the Property for \$680,000.00. Debtor intends to sell the Property and use the net proceeds from the sale to pay a 100% dividend to all creditors and complete her Chapter 13 plan.

The Chapter 13 Trustee has filed an opposition stating that the Estimated Closing Statement filed as an exhibit is incomplete since it is missing the second page. The Trustee also states that the sale is not an arms' length transaction, the sale price is under fair market value since Schedules A/B list the value of the Property at \$1,000,000.00 at the time of filing in April 2019, there appears to be no marketing efforts to obtain higher purchase offers, and if all creditors are paid less than 100% of their claims then the proposed sale is in bad faith and should not be approved.

Creditor Ajax Mortgage Loan Trust 2021-D, Mortgage-Backed Securities, Series 2021-D, by U.S. Bank National Association, as Indenture Trustee, has filed a conditional opposition stating that it supports the sale as long as it results in Debtor paying off Creditor's lien in full via escrow, that is reserves the right to submit an updated payoff demand prior to any close escrow to ensure it is paid in full, and that the payoff will be made to Ajax Mortgage Loan Trust 2021-D, Mortgage Backed Securities, Series 2021-D, by U.S. Bank National Association, as Indenture Trustee, and not to U.S. Bank as listed in the sale motion.

Debtor filed a reply stating that the closing statement anticipates 100% payoff, that she acknowledges the Trustee's concern and will fully pay off all creditors so that her family can remain in the home, and that Creditor will be paid in full and has the right to update the payoff demand prior to closing escrow.

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.

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

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

4. [20-22646](#)-B-13 ROSEMARY JACKSON
[PGM](#)-2 Peter G. Macaluso

MOTION TO MODIFY PLAN
6-29-23 [[48](#)]

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. 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.

5. [23-21460](#)-B-13 TIMOTHY DOOLEY
[RDG-1](#) Eric L. Seyvertsen

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-5-23 [[17](#)]

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). No 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.

First, the Debtor's plan lists claims owed to Specialized Loan Servicing and Travis Credit Union in Class 1, but fails to provide for the pre-petition arrears owed and a monthly dividend payable to those arrears. Without providing for the claims' amount and the monthly dividend to pay that claim, the Debtor's plan is not feasible. 11 U.S.C. § 1325(a)(6).

Second, monthly payments owed to secured creditors total \$5,170.00 per month without the Chapter 13 Trustee's compensation and expense. With the Trustee's compensation and expense, the total would be \$5,583.15 per month. The Debtor's plan payment, however, is only \$300.00 per month. Accordingly, Debtor's plan is not feasible. 11 U.S.C. § 1325(a)(6).

Third, expenses in Schedule J are inappropriate. Specifically, an expense for Travis Credit Union, an expense for Specialized Loan Servicing, and child support obligations and alimony that will cease within the next three years but which the 60-month plan term does not provide for an increase in plan payment once the support obligations have ceased. Therefore, Debtor's plan payment is not proposed in good faith. 11 U.S.C. § 1325(a)(3).

Fourth, the Debtor has failed to provide Trustee with a copy of his 2022 state income tax return. Because of this, it cannot be determined whether Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. §§ 1325(a)(6) and (b)(1).

The plan filed May 4, 2023, 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.

6. [23-20383](#)-B-13 LORAINIE/WINNIEFREDO
[PLC](#)-2 MACANDOG
Peter L. Cianchetta

MOTION TO CONFIRM PLAN
6-22-23 [[40](#)]

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 amended plan.

First, Debtors' motion is to confirm the amended plan filed April 5, 2023, which was already denied confirmation by this court on June 13, 2023. The motion does not provide information that would be of use to the parties, such as a brief description of the plan, an explanation as to what has changed, and a summary of prior events that have brought the Debtors to file and request confirmation of this amended Plan. Instead, the Debtors require all parties, including the Court, to read and review all the documents filed previously and draw their own conclusions. Therefore, Debtor's motion contains insufficient factual grounds and fails to plead with particularity. Fed. R. Civ. P. 7(b).

Second, Debtors filed a Declaration of Winniefredo Macandog and Loraine Macandog Re: Payment on June 5, 2023, that explains where and to whom a \$257,977.00 pension withdrawal was expended. However, the various expenses stated in the declaration were not included in Debtors' schedules. Until the expenses are fully accounted for, it cannot be determined whether the plan is feasible.

Third, Debtors' proposed plan payment of \$389.00 in month 1 is insufficient to cover the monthly plan payment with Trustee's compensation and expense, which totals \$396.71.

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.

7. [20-21794](#)-B-13 GREGORY/JANEE MOORE
[EAT-1](#) Taras Kurta

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
6-9-23 [[111](#)]

LAKEVIEW LOAN SERVICING, LLC
VS.

Final Ruling

This matter was continued from July 11, 2023, to allow the Debtors to bring their plan payments current. Timely responses were filed by the creditor and Chapter 13 Trustee.

The court's decision is to deny the motion for relief from stay.

Creditor Lakeview Loan Servicing ("Creditor"), holder of a deed of trust against real property located at 4110 Zeally Lane, Stockton, California, filed a timely supplemental declaration stating that debtors Gregory Moore and Janee Moore ("Debtors") are still delinquent \$1,884.95 after \$5,653.95 received on July 19, 2023, from the Chapter 13 Trustee was applied to months April 2023 through June 2023.

The Chapter 13 Trustee filed a timely supplemental response stating that the Debtors are delinquent \$0.64 with plan payments. Debtors' last plan payment in the amount of \$736.36 was posted on July 25, 2023. The total amount due through July 2023 is \$100,456.00 and the total amount paid by Debtors through July 2023 is \$100,455.36.

Discussion

In a motion brought under § 362(d)(1), the party seeking relief bears the burden on the issue of the debtor's equity - or lack thereof - in property. 11 U.S.C. § 362(g)(1). Creditor has not met this burden.

Creditor utilizes Debtors' Schedule A/B to value the property at \$360,000.00. Schedules are filed under penalty of perjury. See Fed. R. Bankr. P. 1008. Some courts treat schedules as evidentiary admissions under Federal Rule of Evidence 801(d)(2). *Heath v. American Express Travel Related Services Co., Inc. (In re Heath)*, 331 B.R. 424, 431 (9th Cir. BAP 2005). Others treat them as judicial admissions. *In re Roots Rents, Inc.*, 420 B.R. 28, 40 (Bankr. D. Utah). Whatever their status, schedules carry evidentiary weight. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969-70 (9th Cir. 2012). Therefore, for purposes of this motion only, the court relies on Schedule A/B as the only evidence of the Property's value and values the Property at \$360,000.00.

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Creditor claims it is owed approximately \$233,673.13. Based on the Property's \$360,000.00 value, that leaves equity of \$126,326.87, which in turn creates an equity cushion of 35.091%. Creditor is therefore adequately protected, even in the absence of post-petition payments. The motion is denied.

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

The court will issue an order.