

**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: August 10, 2021

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

August 10, 2021 at 1:00 p.m.

1. [17-90818](#)-B-13 LISA GARCIA CONTINUED MOTION TO MODIFY PLAN
[MSN](#)-1 Mark S. Nelson 6-8-21 [[119](#)]

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 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 permit the requested modification and confirm the modified plan.

This matter was continued from July 20, 2021, to provide the Internal Revenue Service additional time to file an amended proof of claim. The IRS filed amended proof of claim 8-2 on July 21, 2021. Debtor's plan is feasible with this amended proof of claim.

The Trustee filed a supplemental ex parte motion to dismiss its opposition to the Debtor's motion to modify plan.

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.

August 10, 2021 at 1:00 p.m.

2. [16-90740](#)-B-13 JUAN/WENDY GARCIA
[JAD](#)-1 Jessica A. Dorn

MOTION TO MODIFY PLAN
6-23-21 [[40](#)]

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 Debtors have 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 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.

3. [18-90644](#)-B-13 CARRIE FLORES
[JBA](#)-6 Joseph Angelo

MOTION TO MODIFY PLAN
6-17-21 [[137](#)]

DEBTOR DISMISSED: 06/17/2021

Final Ruling

The case was dismissed on June 17, 2021, for failure to make plan payments. Dkt. 135. The motion to modify plan is denied as moot.¹

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

The court will issue an order.

¹The motion to modify and the modified plan were also filed after the case was dismissed. The order dismissing the case was filed at 1:07 p.m. on June 17, 2021. Dkt. 134. The motion to modify and the modified plan were filed at 3:24 p.m. on June 17, 2021. Dkts. 137, 138.

4. [21-90164](#)-B-13 EVARISTO AVILA CONTINUED OBJECTION TO
[RDG](#)-1 Pro Se CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-10-21 [[17](#)]

CONTINUED TO 9/07/2021 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 9/01/2021.

Final Ruling

No appearance at the August 10, 2021, hearing is required. The court will issue an order.

5. [14-90265](#)-B-13 LEONARD/TRACY WEBSTER
[BSH](#)-4 Brian S. Haddix
Thru #6

MOTION TO VALUE COLLATERAL OF
VALLEY FIRST CREDIT UNION
7-23-21 [[73](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). 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 value the claim of Valley First Credit Union at \$0.00 and **continue the matter to August 17, 2021, at 1:00 p.m.**

Debtors move to value the claim of Valley First Credit Union ("Creditor") pursuant to 11 U.S.C. § 506(a). Debtors are the owners of the subject real property commonly known as 127 Portrait Lane, Patterson, California ("Property"). Debtor seeks to value the Property at a fair market value of \$275,000.00 as of the petition filing date. As the owner, Debtors' opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately \$667,877.18. A second deed of trust secures a claim with a balance of approximately \$118,061.00. Creditor's judgment lien secures a loan with a balance of approximately \$10,537.50. Therefore, Creditor's claim secured by a junior lien is completely under-collateralized. Creditor's claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is conditionally granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, August 13, 2021, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee 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 August 17, 2021, 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 August 17, 2021, at 1:00 p.m.

The court will issue an order.

6. [14-90265](#)-B-13 LEONARD/TRACY WEBSTER
[BSH](#)-5 Brian S. Haddix

MOTION TO AVOID LIEN OF VALLEY
FIRST CREDIT UNION
7-23-21 [[78](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). 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 deny without prejudice the motion to avoid lien of Valley First Credit Union.

This is a request for an order avoiding the judgment lien of Valley First Credit Union ("Creditor") against the Debtors' property commonly known as 127 Portrait Lane, Patterson, California ("Property").

Although the Debtors asserts that judgment was entered against them in favor of Creditor in the amount of \$10,537.50, no abstract of judgment was filed as an exhibit.

The court cannot determine whether the fixing of this judicial lien impairs the Debtors' exemption of the real property or whether its fixing is avoided pursuant to 11 U.S.C. § 522(f)(2)(A). Without an abstract of judgment to support its assertion, the Debtors have failed to meet the burden of establishing all elements of § 522(f). See *In re Armenakis*, 406 B.R. 589, 604 (Bankr. S.D.N.Y. 2009). And even in the absence of an objection by a judicial lien creditor, the court cannot grant affirmative relief unless the Debtors have established a prima facie basis for relief under § 522(f). *In re Schneider*, 2013 WL 5979756 at *3 (Bankr. E.D.N.Y. 2013). The Debtors have not met that burden. Therefore, the Debtors' motion is denied without prejudice.

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

The court will issue an order.

7. [19-90376](#)-B-13 KATHERINE MARTIN
[DCJ](#)-1 David C. Johnston

CONTINUED OBJECTION TO CLAIM OF
INTERNAL REVENUE SERVICE, CLAIM
NUMBER 2
5-27-21 [[41](#)]

Final Ruling

No appearance at the August 10, 2021, hearing is required. The court entered an order sustaining in part and overruling in part the objection to confirmation on July 18, 2021. See dkts. 56, 59.

The court will issue an order.

8. [20-90684](#)-B-13 J JESUS GOMEZ AND MARIA MOTION TO CONFIRM PLAN
[TMO](#)-3 TRIGUEROS 6-30-21 [[108](#)]
T. Mark O'Toole

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended 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.