

**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 16, 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

August 16, 2022 at 1:00 p.m.

1. [19-90817](#)-B-13 GARY COOKSEY MOTION TO VACATE DISMISSAL OF
[BSH](#)-10 Brian S. Haddix CASE
7-28-22 [[183](#)]
DEBTOR DISMISSED: 07/01/2022

Final Ruling

Although the motion is filed, set, and served under Local Bankr. R. 9014-1(f)(2), because the motion implicates the automatic stay of 11 U.S.C. § 362(a) and the circumstances that warrant relief were not caused by Debtor Gary Cooksey ("Debtor"), as explained further below, the court will consider the motion on an *ex parte* basis. See *Manpower Inc. v. Slingshot Connections LLC*, 2012 WL 3561974, at *2 (E.D. Cal. Aug. 17, 2012) (court may consider *ex parte* motion to vacate to prevent irreparable harm that may occur if the motion is heard according to regular procedures and moving party is without fault).

The court's decision is to grant the motion to vacate dismissal of case.

Debtor moves to vacate the order dismissing this Chapter 13 case. The Chapter 13 case was dismissed on July 1, 2022, for failure to pay \$32 for filing an amended Schedule F and Creditors Matrix. The court issued a Notice of Payment Due and thereafter an Order to Show Cause. Debtor was unaware of the fee owed since Debtor's attorney became ill with COVID-19 and failed to calendar the OSC or inform the Debtor of the fee. Upon receiving notice of the dismissal, Debtor's counsel immediately paid the \$32 filing fee. Debtor states that had he been aware of the fee owed, he would have paid it.

Discussion

Federal Rule of Civil Procedure 60(b)(1), applicable by Federal Rule of Bankruptcy Procedure 9024, permits the court to relieve a party from a final judgment or order for "mistake, inadvertence, surprise, or excusable neglect[.]" Fed. R. Civ. P. 60(b)(1); Fed. R. Bankr. P. 9024. Relief for excusable neglect is governed by the *Pioneer-Briones* factors, *i.e.*, (1) the danger of prejudice to any non-moving party if the dismissal is vacated; (2) the length of delay and the potential impact of that delay on judicial proceeding; (3) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (4) whether the debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997).

Danger of prejudice to creditors is minimal. Debtor's counsel moved quickly by paying the filing fee the day he became aware of the case's dismissal. Vacating dismissal will not delay these proceedings since the Debtor has made all plan payments and remains current on the plan. Dismissal also resulted from an oversight outside the control of the Debtor, who was unaware that the filing fee was not paid by his counsel. Debtor states that, had he been aware of the owed fee, he would have paid for it himself. And there is no indication of any bad faith by the Debtor.

Therefore, the Debtor's motion to vacate the order dismissing this Chapter 13 case will be granted, the dismissal order at dkt. 181 vacated, and this case ordered reinstated.

August 16, 2022 at 1:00 p.m.

Further, by vacating the dismissal order which caused the automatic stay of 11 U.S.C. § 362(a) to terminate, upon entry of the order vacating the dismissal order the automatic stay of § 362(a) is revived for all purposes and as to all parties in interest - but only upon entry of the order vacating the dismissal order and for acts occurring thereafter. *State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-1080 and n.8 (10th Cir. 1996); *Ramirez v. Whelen (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) ("Occasionally, it might suffice to revive the stay by way of motion for reconsideration under Federal Rules of Civil Procedure 59(e) or 60(b), which are applicable in bankruptcy by virtue of Federal Rules of Bankruptcy Procedure 9021 and 9023 [sic].") (Klein, J., concurring)

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

The court will issue an order.

2. [22-90153](#)-B-13 DIANE DOKKHAM
[CRG](#)-1 Carl R. Gustafson

MOTION TO AVOID LIEN OF CAVALRY
INVESTMENTS, LLC
7-13-22 [[19](#)]

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. 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 Cavalry Investments, LLC ("Creditor") against the Debtor's property commonly known as 832 California Ave, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$24,815.72. An abstract of judgment was recorded with Stanislaus County on October 2, 2020, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$342,700.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$342,700.00 on Schedule C. All other liens recorded against the Property total \$50,574.80.

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.

3. [22-90174](#)-B-13 JUSTIN CARLOTTI
[RDG](#)-1 Eric J. Gravel

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-25-22 [[16](#)]

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.

The Debtor's Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income includes monthly expenses that require additional explanation. Specifically, \$1,996.00 for additional health care expenses, \$2,500.00 for food and housekeeping supplies for a household of three people, and \$1,000.00 in transportation.

Other objections raised by the Chapter 13 Trustee appear to have been resolved. Specifically, Debtor filed an amended Disclosure of Attorney Compensation on August 7, 2020, that corrects the legal services provided, and the claim of AmeriCredit Financial Services, Inc. dba GM Financial for a 2020 GMC Sierra is included in the plan under Class 2(A), albeit in an amount greater than is claimed.¹

Nonetheless, due to the unexplained monthly expenses, the plan filed May 26, 2022, 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.

¹The plan filed May 26, 2022, lists the amount claimed as \$33,488.00. However, both proof of claim no. 1-1 filed by AmeriCredit Financial Services, Inc. dba GM Financial and amended Schedule D filed by the Debtor on July 27, 2022, list the amount claimed as \$33,050.04.

4. [22-90183](#)-B-13 SHAWN SALINAS
[RDG](#)-1 David C. Johnston

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-21-22 [[18](#)]

Final Ruling

The hearing on August 16, 2022, at 1:00 p.m. is continued to August 30, 2022, at 1:00 p.m. No appearance on August 16, 2022, at 1:00 p.m. is necessary.

On July 22, 2022, Debtor Shawn Salina ("Debtor") filed a motion under 11 U.S.C. § 1307(b) to voluntarily dismiss this chapter 13 case. See dkt. 22. Debtor's attorney has not uploaded an appropriate dismissal order.

Debtor's attorney shall upload an order granting the motion to dismiss by Friday, August 19, 2022.

If an order granting the motion to dismiss is not timely uploaded, the court will deem the Debtor's motion to dismiss as abandoned and this matter will be heard at the continued hearing on August 30, 2022, at 1:00 p.m.

If an order granting the motion to dismiss is timely uploaded, the continued hearing on August 30, 2022, at 1:00 p.m. will be vacated as moot.

The court will issue an order.