

**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 22, 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

August 22, 2023 at 1:00 p.m.

- | | | |
|----|--|---|
| 1. | <u>23-90200</u> -B-13 JAMES/JUDITH HASSAY
<u>RDG</u> -2 Mary D. Anderson | OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
7-18-23 [<u>32</u>] |
|----|--|---|

Final Ruling

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(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 sustain the objection and the exemptions are disallowed in their entirety.

The Trustee objects to the Debtors' use of both California Code of Civil Procedure § 704.010 and § 703.140 to claim assets exempt. These code sections are mutually exclusive and may not be used together.

The Trustee's objection is sustained and the claimed exemption is disallowed.

The objection is ORDERED SUSTAINED and the claimed exemptions DISALLOWED for reasons stated in the minutes.

The court will issue an order.

August 22, 2023 at 1:00 p.m.

2. [23-90319](#)-B-13 LAWRENCE QUALLS
[ADR](#)-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
7-24-23 [[10](#)]

B & Y INVESTMENT LLC 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). 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 for relief from stay.

B & Y Investment LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1300 N. 9th St. #A, C, D, E, F & 5000 foot pad Modesto, California (the "Property"). Movant has provided the Declaration of Tom Hui to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Hui Declaration states that Debtor does not claim any lawful possessory interest in and to the Property. Debtor's interest arises out of a written rental agreement wherein Debtor has rented commercial real property from Movant. Debtor is doing business as Modesto Technical College, Inc. at this location. Debtor agreed to pay \$13,390.00 rent each month on the first day of each month. Debtor only paid \$3,000.00 each month for the months of April, May, and June 2023 leaving a balance due of \$31,170.00 in unpaid rent. Debtor did not pay any rent for July 2023.

Debtor's tenancy was terminated pre-petition by Movant serving a three day notice to pay or quit, and Debtor failed to comply. Debtor has no ownership interest in the property and has not provided any undertaking to give Movant adequate protection.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant served a three day notice to pay rent or quit commercial tenancy on June 5, 2023. Movant has provided a standard industrial/commercial multi-tenant lease-gross as evidence of the lease agreement. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Since this is a commercial property and not Debtor's residence, 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.

3. [23-90256](#)-B-13 DENNIS BAMMER
[RDG](#)-1 Eric M. Nixdorf

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D GREER
7-31-23 [[15](#)]

Final Ruling

The Chapter 13 Trustee having filed a notice of dismissal 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.

There being no other objection to confirmation, the plan filed June 4, 2023, will be confirmed.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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.

4. [22-90172](#)-B-13 ALBERT/SHANNON PEREZ MOTION TO MODIFY PLAN
[LBF](#)-3 Lauren Franzella 6-30-23 [[62](#)]

WITHDRAWN BY M.P.

Final Ruling

The Debtors having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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

The court will issue an order.

5. [18-90792](#)-B-13 BRIAN BERGMANN-CARLSON CONTINUED MOTION FOR RELIEF
[KMB](#)-1 AND JENNIFER CARLSON FROM AUTOMATIC STAY
Matthew M. Spielberg 6-8-23 [[55](#)]
U.S. BANK NATIONAL
ASSOCIATION VS.

Final Ruling

U.S. Bank National Association ("Movant") filed a status report stating that its counsel and that of the Debtor have been in communication regarding a proposed adequate protection agreement in order to cure the post-petition arrears. The terms proposed by the Debtors have been agreed to by Movant. The agreement is currently being drafted for the parties to sign.

In light of this, Movant requests an additional 30-day continuance of the scheduled hearing in order for the parties to finalize the adequate protection agreement and file it with the court.

The matter is continued to **September 26, 2023, at 1:00 p.m.**

The court will issue an order.