

**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 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
Sacramento, California

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

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1. [22-20618](#)-B-13 JAVIER VALENCIA DIAZ MOTION FOR RELIEF FROM
[SKI](#)-1 Gregory J. Smith AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
7-20-23 [[20](#)]

AMERICREDIT FINANCIAL
SERVICES, INC. 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.

Americredit Financial Services, Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2021 Chevrolet Silverado 1500 (the "Vehicle"). The moving party has provided the Declaration of Aaron Rangel to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Rangel Declaration states that the monthly payment is \$795.88 and that the last payment from the Debtor was received on May 1, 2023, and was applied to the payment due March and April 2023. A default of \$147.44 remains for April 2023. Regular payments were due for May, June, and July 2023, which amount to a default of \$2,387.64. Another payment will come due in August 2023.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$45,529.72, as stated in Movant's papers, while the value of the Vehicle is determined to be \$50,500.00, as stated in Schedules A/B and D filed by Debtor.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n*

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

Page 1 of 12

of Texas v. Timbers of Inwood Forest Associates. Ltd., 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The request for relief from stay as to any non-filing co-debtor, who is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

There also being no objections from any party, 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.

2. [23-21840](#)-B-13 NICOLE CASTILLO
[EAT](#)-1 David A. Boone
[Thru #3](#)

OBJECTION TO CONFIRMATION OF
PLAN BY BANKUNITED N.A.
7-12-23 [[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 for reasons stated at Item #3, RDG-1.

The plan filed June 5, 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.

3. [23-21840](#)-B-13 NICOLE CASTILLO
[RDG](#)-1 David A. Boone

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-31-23 [[21](#)]

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 is unemployed and her only source of income per Schedule I at line 8(h) is a Family Contribution of \$3,500.00. The Debtor has failed to file a declaration from the family member or members attesting to their willingness and ability to contribute a total of \$3,500.00 a month for the life of the plan. 11 U.S.C. § 1325(a)(6).

Second, the Debtor has used \$704,730 to claim exempt \$678,391.00 in her residence. This amount exceeds the limit for median home sales in 2022 in San Joaquin County. Until an amended Schedule C is filed, it cannot be determined whether Debtor's plan passes the liquidation test of 11 U.S.C. § 1325(a)(4).

Third, the plan provides for Carrington Mortgage Services as a Class 1 claim with

prepetition arrears of \$18,000.00 to be paid a monthly dividend of \$300.00, a post-petition monthly payment of \$1,533.86, and at 0% interest. Carrington Mortgage Services has filed a proof of claim listing pre-petition arrears of \$21,188.57 and a post-petition monthly payment of \$1,537.26. The Debtor has proposed a plan payment of \$550.00 a month for 60 months. Therefore, Debtor's plan is not feasible. 11 U.S.C. § 1325(a)(6).

Fourth, Debtor's Schedule J includes a housing expense of \$1,533.86. Since the mortgage is included in Class 1 of the plan, the housing expense on Schedule J is inappropriate and should be removed.

The plan filed June 5, 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.

4. [23-21845](#)-B-13 JOSEPH MOORE OBJECTION TO CONFIRMATION OF
[MWP](#)-1 G. Michael Williams PLAN BY THE RAMA FUND, LLC
Thru #5 7-18-23 [[21](#)]

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 for reasons stated at Item #5, RDG-1.

The plan filed June 15, 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.

5. [23-21845](#)-B-13 JOSEPH MOORE OBJECTION TO CONFIRMATION OF
[RDG](#)-1 G. Michael Williams PLAN BY RUSSELL D. GREER
7-31-23 [[26](#)]

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, Debtor's Schedule I includes a contribution of \$2,500.00 per month from Debtor's parents. Debtor has failed to file a declaration from his parents attesting to their willingness and ability to contribute a total of \$2,500.00 a month for the life of the plan. 11 U.S.C. § 1325(a)(6).

Second, the plan provides for FCI Lender Services, servicing agent to The Rama Fund, LLC, as a Class 1 claim with pre-petition arrears of \$42,650.00 to be paid at 4% interest, and as a Class 2(A) claim in the amount of \$374,200.00 to be paid at 8% interest. In both classifications, the Debtor has failed to provide a dividend amount to pay said claims. With the dual classification of the claim, and without providing a dividend amount, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Third, the Disclosure of Compensation of Attorney for Debtor at Line 6 states that the agreed upon fee of \$4,000.00 does not include judicial lien avoidances and relief from stay actions. This is contradictory to the Rights and Responsibilities signed by Debtor and his attorney. These services are included in the "No Look Fee" and should not be excluded.

The plan filed June 15, 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. [23-21849](#)-B-13 JUAN GONZALEZ
[ALG](#)-1 David C. Johnston

OBJECTION TO CONFIRMATION OF
PLAN BY UNITED FIDELITY FUNDING
CORP
7-19-23 [[25](#)]

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). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of United Fidelity Funding Corp, a Missouri Corporation's objection, the Debtor filed an amended plan on August 26, 2023. The confirmation hearing for the amended plan is scheduled for October 3, 2023. The earlier plan filed July 5, 2023, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

7. [23-21855](#)-B-13 CLIFFORD/VICTORIA HEITMAN OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Kathleen H. Crist PLAN BY RUSSELL D. GREER
7-31-23 [[17](#)]

CONTINUED TO 8/29/2023 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF
CREDITORS SET FOR 8/23/2023.

Final Ruling

No appearance at the August 22, 2023, hearing is required. The court will issue an
order.

8. [23-21257](#)-B-13 EMILIE BURTON
[RS-1](#) Richard L. Sturdevant

MOTION TO CONFIRM PLAN
7-18-23 [[44](#)]

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 Debtor has 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 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.

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 plan does not provide for the correct amount of post-petition arrears for creditors Bank of America and Fay Servicing LLC. Without providing the correct amount in post-petition arrears, it cannot be determined whether the plan is feasible.

Second, the Debtor is delinquent \$3,650.00 under the proposed plan. Section 7.01 of the plan provides for payments of \$3,650.00 a month commencing July 25, 2023. The Debtor did not make a payment in July 2023. As such, Debtor is \$3,650.00 delinquent under the proposed plan.

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 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 testified that information regarding a part time job was not included on her Schedule I or Form 122C-1. Until amended schedules are filed, it cannot be determined whether Debtor's plan is feasible and pays all projected disposable income to Debtor's general unsecured creditors. 11 U.S.C. §§ 1325(a)(6), (b)(1).

Second, the plan provides for Select Portfolio Servicing, Inc., as a Class 1 claim with prepetition arrears of \$61,000.00 to be paid at 0% a monthly dividend of \$1,016.67 and a postpetition monthly payment of \$1,200.00. Debtor's Schedule J includes a housing expense of \$1,200.00 at line 4. Since the mortgage creditor is paid through the plan, the housing expense on Schedule J is inappropriate and should be removed.

Third, the Debtor's Disclosure of Compensation of Attorney for Debtor at line 6 states that the agreed upon fee of \$4,000.00 does not include judicial lien avoidances and relief from stay actions. This is contradictory to the Rights and Responsibilities signed by Debtor and his attorney. These services are included in the "No Look Fee" and should not be excluded.

Fourth, feasibility of the plan depends on the avoidance of the lien of second mortgage holder MRC/United Wholesale. To date, a motion to value has yet to be filed.

Fifth, the plan provides for Select Portfolio Servicing as a Class 1 claim with prepetition arrears of \$61,000.00 to be paid a monthly dividend of \$1,016.67, a post-petition monthly payment of \$1,200.00, and at 0% interest. Since Debtor's proposed plan pays only \$1,150.00, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

The plan filed June 22, 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.

11. [12-28694](#)-B-13 MIKE DOWNIE AND CHERI
[22-2096](#) TILLET-DOWNIE CAE-1
DOWNIE ET AL V. PNC BANK ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
9-23-22 [[1](#)]

CONTINUED TO 10/24/23 AT 11:00 A.M.

Final Ruling

No appearance at the August 22, 2023, hearing is necessary. The court will issue an order.