

**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: September 3, 2024

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

September 3, 2024 at 1:00 p.m.

1. [24-90310](#)-B-13 VANNA TRAN MOTION TO CONFIRM PLAN
[JCK](#)-1 Gregory J. Smith 7-17-24 [[18](#)]

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 first amended plan.

First, creditor Deutsche Bank National Trust has filed a secured claim in the amount of \$44,038.48 for property located at Cougar Creek Drive, Patterson, California (Claim 1-1). Debtor's plan does not provide for this secured claim. Debtor's Schedule J and Statement of Financial Affairs are silent as to the treatment of the secured claim. Without providing for this claim, it cannot be determined whether Debtor intends to pay this creditor. Whether this creditor is to be paid and, if it is to be paid how it is to be paid, impacts whether Debtor will be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6).

Second, Debtor's Schedule I includes monthly gross wages of \$6,879.00 from Debtor's non-filing spouse. Debtor has failed to provide payment advices from her spouse's employment at Sanmina Corporation. Without these documents, 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 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.

September 3, 2024 at 1:00 p.m.

2. [24-90318](#)-B-13 LENE HERNANDEZ
[LGT](#)-1 Peter G. Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LILIAN
G. TSANG
7-29-24 [[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 11, 2024, 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 for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

3. [24-90384](#)-B-13 STEPHEN/MASHELL GUGEL
[CJY](#)-1 Christian J. Younger

MOTION TO VALUE COLLATERAL OF
FIRST TECH FEDERAL CREDIT UNION
8-4-24 [[13](#)]

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 deny without prejudice the motion to value secured claim of First Tech Federal Credit Union.

Debtors move to value the secured claim of First Tech Federal Credit Union ("Creditor"). Debtors are the owners of a 2020 Ford Edge ST ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$24,606.00 as of the petition filing date. As the owner, Debtors' opinion of value is 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 3-1 filed by First Tech Federal Credit Union is the claim which may be the subject of the present motion.

Discussion

The court finds issue with Debtors' valuation. First, the declaration states that the valuation of the Vehicle is based on a Kelley Blue Book printout but this is a third-party industry source and, therefore, Debtors' opinion of value is based on hearsay. Fed R. Evid. 801-803; see also *In re Guerra*, 2008 WL 3200931, *2 n.4 (Bankr. E.D. Cal. 2008) ("Filed with Guerra's declaration was an unauthenticated document titled: 'Edmonds.com True Market Value Pricing Report.' The court has not considered this attachment in that it is inadmissible hearsay[.]"). Second, the motion states that the valuation is a "private party" value. This is the value in which a private party, who is not a retailer, could buy or sell a car. The standard here must be a retail valuation, taking into account the condition of the car. See 11 U.S.C. § 506(a).

In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The value of the vehicle at the time the petition was filed is when valuation is determined without deduction for costs of sale or marketing. *Id.*

The Debtors have not persuaded the court regarding their position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

The court will issue an order.

4. [24-90285](#)-B-13 JOHNATHAN MOHR CONTINUED OBJECTION TO
[LGT](#)-1 David C. Johnston CONFIRMATION OF PLAN BY LILIAN
G. TSANG
7-19-24 [[23](#)]

CONTINUED TO 9/10/24 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS
SET FOR 9/05/24.

Final Ruling

No appearance at the September 3, 2024, hearing is required. The court will issue an
order.

5. [20-90299](#)-B-13 LOUIE/ROSIE ENRIQUEZ MOTION TO MODIFY PLAN
[LBF](#)-1 Lauren Franzella 7-15-24 [[34](#)]

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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.