

**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: September 5, 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

September 5, 2023 at 1:00 p.m.

1.	<u>12-29121</u> -B-13 <u>RNE</u> -3	LORAN/THOMAS VETTER Stephanie U. Chukwu	MOTION TO AVOID LIEN OF DISCOVER BANK 8-4-23 [<u>68</u>]
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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 of Discover Bank.

This is a request for an order avoiding the judicial lien of Discover Bank ("Creditor") against the Debtors' property commonly known as 223 Gibson Road, Woodland, California ("Property").

A judgment was entered against Joint Debtor in favor of Creditor in the amount of \$14,112.44. An abstract of judgment was recorded with Yolo County on April 27, 2012, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of \$189,000.00 as of the date of the petition. Debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C. All other liens recorded against the Property total \$219,438.16.

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 Debtors' 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.

2. [23-20748](#)-B-13 RONALD/YUVETTA PERRIN MOTION FOR RELIEF FROM
[RDW](#)-1 G. Michael Williams AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
8-22-23 [[78](#)]

PAUL NEWMAN VS.

Final Ruling

The case having been dismissed at Item 10, RDG-1, the motion for relief from automatic stay is denied as moot.

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

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). A response 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.

The Chapter 13 Trustee filed an objection to plan confirmation. The Debtor filed two responses, the second of which stated that the Trustee's objection should be sustained, the Debtor's motion to modify plan denied, and requesting to extend the deadline of the Application to Dismiss Case to allow the Debtor to become current on or before September 25, 2023. Debtor states that this should provide her sufficient time to receive back rental payments from her daughter, who lives in a unit in front of Debtor's home and pays \$1,500 per month in rent.

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.

IT IS FURTHER ORDERED that the Notice of Default and Intent to Dismiss Case, dkt. 68, is modified to allow the Debtor until September 25, 2023, to become current on plan payments. If the Debtor is not current, the case shall be dismissed on the Trustee's ex parte application.

The court will issue an order.

4. [23-22560](#)-B-13 MOHAMMED NAIF
[MC-2](#) Muoi Chea

MOTION TO VALUE COLLATERAL OF
ALLY BANK
8-15-23 [[17](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

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 secured claim of Ally Bank at \$19,114.00 and continue the matter to September 12, 2023, at 1:00 p.m.**

Debtor moves to value the secured claim of Ally Bank ("Creditor"). Debtor is the owner of a 2016 Infinity QX60 3.5 Sport Utility 4D ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$19,114.00 as of the petition filing date. As the owner, Debtor's 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).

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 lien on the Vehicle's title secures a purchase-money loan incurred in November 2019, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$27,884.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$19,114.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 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 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, September 8, 2023, 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 creditor 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 September 12, 2023, 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 September 12, 2023, at 1:00 p.m.

The court will issue an order.

5. [23-22562](#)-B-13 KENNETH/SOPHIA MOORE
[LBF](#)-1 Lauren Franzella

MOTION TO VALUE COLLATERAL OF
SOLARCITY FINANCE COMPANY,
LLC/TESLA, INC.
8-3-23 [[8](#)]

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 value the secured claim of Solarcity Finance Company, LLC/Tesla, Inc. at \$9,800.00.

Debtors move to value the secured claim of Solarcity Finance Company, LLC/Tesla, Inc. ("Creditor"). Debtors are the owners of solar panels and related installation equipment to their home ("Personal Property"). The Debtors seek to value the Personal Property at a replacement value of \$9,800.00 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).

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

In the Chapter 13 context, the replacement value of personal property used by a debtor 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 time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. See 11 U.S.C. § 1325(a).

The total dollar amount of the obligation to Creditor is \$29,510.00 as stated in an invoice dated July 3, 2023. Debtors assert that the price a retail merchant would charge for the Personal Property is \$9,800.00 if the solar panels and related installation equipment were dismantled from their home and resold. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$9,800.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will issue an order.

6. [23-21491](#)-B-13 LINDA SAEFONG AND KAO MOTION TO VALUE COLLATERAL OF
[MC-2](#) SAEPHAN ALLY BANK DBA ALLY FINANCIAL,
Muoi Chea INC.
8-12-23 [[34](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

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 secured claim of Ally Bank dba Ally Financial, Inc. at \$21,226.00 and continue the matter to September 12, 2023, at 1:00 p.m.**

Debtors move to value the secured claim of Ally Bank dba Ally Financial, Inc. ("Creditor"). Debtors are the owners of a 2018 Nissan Titan Crew Cab ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$21,226.00 as of the petition filing date. As the owners, 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. 21 filed by Ally Bank is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in November 2019, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$26,327.68 according to Claim No. 21. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$21,226.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 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 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, September 8, 2023, 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 creditor 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 September 12, 2023, 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 September 12, 2023, at 1:00 p.m.

The court will issue an order.

Final Ruling

The motion to dismiss case was continued from August 29, 2023 at the request of Debtor's counsel who was unavailable due to a family matter out of state. Debtor's counsel did not file any supplemental response or amended plan prior to the continued hearing date of September 5, 2023.

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 grant the motion to dismiss case and continue the matter to September 12, 2023, at 1:00 p.m.**

First, the Debtor is delinquent in the sum of \$80,000.00. The last payment was received on May 3, 2023. 11 U.S.C. § 1307(c)(4).

Second, Debtor's motion to confirm a first amended plan was heard on April 4, 2023, and confirmation was denied. Debtor has failed to file, set and serve an amended plan. This is an unreasonable delay by the Debtor that is prejudicial to creditors who are delayed in receiving payments. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, September 8, 2023, 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 September 12, 2023, 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 September 12, 2023, at 1:00 p.m.

8. [23-21010](#)-B-13 EARL SPARKES
[RDG](#)-2 Anh V. Nguyen

CONTINUED MOTION TO DISMISS
CASE
8-14-23 [[51](#)]

Final Ruling

This matter was continued from August 29, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 1, 2023. Debtor filed a timely response and a first amended plan with a scheduled confirmation hearing date of October 3, 2023, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 62 and the continued hearing on September 5, 2023, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

9. [22-22612](#)-B-13 LAWRENCE/JENNY BOLDON
[RDG](#)-2 Brian S. Haddix

CONTINUED MOTION TO DISMISS
CASE
8-14-23 [[96](#)]

Final Ruling

This matter was continued from August 29, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 1, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 100, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on September 5, 2023, at 1:00 p.m. is vacated.

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

The court will issue an order.

10. [23-20748](#)-B-13 RONALD/YUVETTA PERRIN CONTINUED MOTION TO DISMISS
[RDG](#)-1 G. Michael Williams CASE
See Also #2 8-15-23 [[73](#)]

Final Ruling

This matter was continued from August 29, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 1, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 87, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on September 5, 2023, at 1:00 p.m. is vacated.

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

The court will issue an order.

11. [22-23291](#)-B-13 JON/ANNETTE WING
[RDG](#)-1 Eric John Schwab

CONTINUED MOTION TO DISMISS
CASE
8-14-23 [[18](#)]

Final Ruling

This matter was continued from August 29, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 1, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 22, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on September 5, 2023, at 1:00 p.m. is vacated.

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

The court will issue an order.