

**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 6, 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.

2. [22-90215](#)-B-13 TY RHONDA ELEY
[CH-1](#) Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-15-22 [[26](#)]

FWK017, LLC VS.

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 deny without prejudice the motion for relief from stay.

FWK017, LLC ("Movant") requests relief from the automatic stay as to property commonly known as 449 Pine Street, Modesto, California, and waiver of the 14-day stay provided under Rule 4001(a)(3).

The motion is supplemented with the Notice of Motion, Declaration of Kevin Kirkpatrick, Relief from Stay Summary Sheet, exhibits, and Proof of Service. Despite the motion having stated that a Memorandum of Points and Authorities was filed, no such document appears on the court's docket. The motion itself does not state with particularity the grounds upon which the requested relief is based as required by Fed. R. Bankr. P. 9013 and Fed. R. Civ. P. 7(b), and does not provide any statutory or case references to support a request for relief from stay.

The motion is therefore denied without prejudice.

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

The court will issue an order.

3. [22-90190](#)-B-13 ELVIRA ANTUNA OBJECTION TO CONFIRMATION OF
[JHK](#)-1 T. Mark O'Toole PLAN BY TD BANK, N.A.
Thru #4 7-12-22 [[20](#)]

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). A written reply has been filed to the objection.

The court has 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 overrule the objection and confirm the plan.

The Debtor and creditor TD Bank ("Creditor") have negotiated a resolution to the issue raised by the Creditor, namely the interest rate allowed to Creditor on their auto loan listed in Class 2 of the plan. The parties agreed to an interest rate of 6.5% per year instead of 5%. Debtor states that the change in interest rate and payment will be reflected in the order confirming.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed June 17, 2022, is confirmed.

The objection is ORDERED OVERRULED 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. [22-90190](#)-B-13 ELVIRA ANTUNA OBJECTION TO CONFIRMATION OF
[RDG](#)-1 T. Mark O'Toole PLAN BY RUSSELL D. GREER
8-3-22 [[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). 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.

The court has 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 overrule the objection and confirm the plan.

The Chapter 13 Trustee objects to confirmation on grounds that the Debtor did not attend the meeting of creditors held on August 3, 2022. The meeting was continued to August 31, 2022. The Debtor appeared at the continued meeting and the meeting was concluded. The Trustee's objection is therefore resolved.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and

the plan filed June 17, 2022, is confirmed.

The objection is ORDERED OVERRULED 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.

5. [22-90093](#)-B-13 JAMES RIDDLE MOTION TO CONFIRM PLAN
[JNV](#)-4 Jason N. Vogelpohl 7-13-22 [[55](#)]

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 will address the merits of the motion at the hearing.]

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 second amended plan.

Debtor is \$1,697.00 delinquent in plan payments. The last payment in the amount of \$500.00 was posted on July 11, 2022. The next scheduled payment of \$1,118.00 is due on August 25, 2022. The Debtor may not be able or willing to make the plan payments based on his current delinquency under the pending plan. 11 U.S.C. § 1325(a)(2), 11 U.S.C. § 1325(a)(6).

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.

6. [22-90197](#)-B-13 NICOLE DAMIN
[KMM-1](#) Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY EQUITY PRIME MORTGAGE
LLC
7-8-22 [[14](#)]

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.

Objecting creditor Equity Prime Mortgage LLC holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$1,778.53 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for full payment of the arrearage and maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed June 20, 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.

7. [21-90408](#)-B-13 SILVIA HERNANDEZ
[RDG](#)-5 Chinonye Ugorji

CONTINUED MOTION TO DISMISS
CASE
8-15-22 [[79](#)]

Final Ruling

This matter was continued from August 30, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 2, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 83, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on September 6, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

8. [22-90017](#)-B-13 IVAN/JANET AGASSI
[RDG-2](#) David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
8-15-22 [[37](#)]

Final Ruling

This matter was continued from August 30, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 2, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 41, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on September 6, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

9. [21-90579](#)-B-13 MATTHEW/CELESTE JAMISON CONTINUED MOTION TO DISMISS
[RDG-3](#) Jessica A. Dorn CASE
8-15-22 [[55](#)]

Final Ruling

This matter was continued from August 30, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 2, 2022. The Debtors timely filed a response on September 2, 2022, and filed a second amended plan with a scheduled confirmation hearing date of October 4, 2022, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 67 and the continued hearing on September 6, 2022, 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.