

**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 14, 2021**

**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 14, 2021 at 1:00 p.m.**

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1. [21-22315](#)-B-13 CONCEPCION ROCHA MOTION TO CONFIRM PLAN  
[LRR](#)-1 Len ReidReynoso 8-6-21 [[16](#)]

**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, although the Debtor acknowledges in her response that the monthly dividend and interest rate of Class 2 creditor 1st United Services Credit Union is incorrect, the increase in monthly dividend by \$58.00 would render the plan not feasible. Debtor's Schedule J shows a net income that would not support an increase in the monthly plan payment.

Second, Debtor's plan provides for Specialized Loan Servicing as a Class 1 creditor with a post-petition mortgage payment of \$48.00 per month. Specialized Loan Serving filed Claim No. 1-1 indicating a monthly post-petition mortgage payment of \$161.23. With the increased mortgage payment, Debtors' plan is not feasible. Debtor's response does not resolve this issue.

Third, Debtor's plan provides for total priority claims in the amount of \$865.00. The Internal Revenue Service filed amended Claim No. 2-2 on September 9, 2021, with a priority portion of \$1,674.02. Debtor's plan is not feasible with the increased priority claim filed. Debtor's response does not resolve this issue.

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 14, 2021 at 1:00 p.m.**

2. [14-26818](#)-B-13 MARIE TABAREZ MOTION TO AVOID LIEN OF GCFS,  
[JLK](#)-2 James L. Keenan INC.  
**Thru #3** 8-11-21 [[101](#)]

**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.

This is a request for an order avoiding the judicial lien of GCFS, Inc. ("Creditor") against the Debtor's property commonly known as 2754 34th Avenue, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$43,052.27. An abstract of judgment was recorded with Sacramento County on March 6, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$75,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$10.00 on Schedule C. A first deed of trust recorded against the Property at the time of filing totaled \$152,330.00.

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 Debtor's 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.

3. [14-26818](#)-B-13 MARIE TABAREZ MOTION TO AVOID LIEN OF  
[JLK](#)-3 James L. Keenan DISCOVER BANK  
8-11-21 [[105](#)]

**Final Ruling**

The motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). However, no certificate of service accompanies the Motion to Avoid Judicial Lien of Discover Bank. It appears that Debtor served Discover Bank with the Motion to Avoid Judicial Lien of GCFS, Inc. See dkt. 108. Moreover, because Discover Bank is an insured depository institution, service must be by certified mail to the attention of an officer (and only an officer) of the institution. See Fed. R. Bankr. P. 7004(h); see also *Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor).

The motion to avoid lien of Discover Bank is denied without prejudice.

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

The court will issue an order.

4. [21-20770](#)-B-13 ANGELAS ASHLEY  
[JLL](#)-1 Jennifer G. Lee

MOTION TO VALUE COLLATERAL OF  
INTERNAL REVENUE SERVICE  
8-27-21 [[24](#)]

### **Final Ruling**

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). 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 deny in part and grant in part the motion to value collateral of Internal Revenue Service, and **continue the matter to September 21, 2021, at 1:00 p.m.**

Debtor moves to value the secured claim of Internal Revenue Service ("Creditor"). Debtor is the owner of a various items of personal property ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of \$18,000.00 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).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 10-1 filed by Internal Revenue Service is the claim which may be the subject of the present motion.

### **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 debt owed to Creditor is \$158,952.14, of which \$37,460.77 is secured, as stated in the Claim No. 10-1. Debtor asserts that the price a retail merchant would charge for the Personal Property is \$18,000.00. However, a review of Debtor's schedules filed March 4, 2021, shows that she has valued her Personal Property at \$23,719.82.

Since the value of Debtor's Personal Property is determined on the date the petition is filed and because Debtor's schedules are filed under penalty of perjury, the court will use the Personal Property's scheduled value of \$23,719.82. for the motion to value analysis.

The court finds that Creditor's claim secured by a lien on the Personal Property is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$23,719.82. 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 denied in part and granted in part.

### **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 17, 2021, 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 21, 2021, 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 21, 2021, at 1:00 p.m.

The court will issue an order.

5. [20-25678](#)-B-13 JOSE GRACIA  
[GSJ](#)-2 Grace S. Johnson

CONTINUED MOTION TO CONFIRM  
PLAN  
7-30-21 [[54](#)]

### **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.

6. [21-22481](#)-B-13 HONG VUONG AND THU HUYNH OBJECTION TO CONFIRMATION OF  
[RDG](#)-1 Jason N. Vogelpohl PLAN BY RUSSELL D. GREER  
8-19-21 [[24](#)]

**Final Ruling**

The case was dismissed by the debtors on September 3, 2021. The objection to confirmation of plan is overruled as moot.

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

The court will issue an order.

7. [21-22482](#)-B-13 GLENDA SHELBY  
[RAS](#)-1 Gregory J. Smith

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
8-24-21 [[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). A 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 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 sustain the objection and deny confirmation of the plan.

U.S. Bank National Association ("Creditor"), whose interest is secured by a deed of trust encumbering real property located at 1760 New Horizons Drive, Manteca, California ("Property"), objects to confirmation of the plan on grounds that it attempts to modify its rights by placing its claim in Class 1, which is reserved for secured claims that mature after the completion of the plan, when the Creditor's claim in fact matures on September 1, 2021. Creditor states that the plan proposes post-petition monthly payments in the amount of \$1,219.63 with an interest rate of 0.00% paid through the Chapter 13 Trustee, until the Property is sold on or before July 2022. Creditor states that if Debtor is seeking to extend the maturity date of Creditor's secured claim, Creditor is entitled to receive interest rates on the secured claim amounts during the extended period after the maturity date.

Debtor filed a response stating that she and Creditor have agreed to a COVID-19 84-month plan at \$1,360 a month for August 2021, then \$2,092 a month commencing September 2021. Debtor states that Creditor's claim is at \$151,714.30 with a 4.25% interest rate, which to accrue only up to the sale of the Property. Debtor states that the sale is expected to be on or before July 2022 and that the sale will pay off the plan at 100% with 0.08% interest to Class 7 general unsecured creditors. Debtor also states that, due to eligibility criteria, the plan continues to be a 60-month plan.

The court has issue with Debtor's proposed plan. Debtor's schedules do not support a \$2,092 monthly plan payment commencing September 2021. Additionally, the sale of the Property in July 2022 is speculative.

The plan filed July 6, 2021, 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.



8. [21-22483](#)-B-13 HAROLD/KATHY NORMAN CONTINUED MOTION TO VALUE  
[JCK](#)-1 Gregory J. Smith COLLATERAL OF SYSTEMS &  
[Thru #9](#) SERVICES TECHNOLOGIES, INC  
7-12-21 [[10](#)]

**Final Ruling**

This matter was continued from the original hearing date of August 17, 2021, to provide Systems & Services Technologies, Inc. ("Creditor") additional time to obtain an appraisal of a 2017 Shadow Cruiser ("Vehicle"). Debtors and Creditor filed a stipulation on August 26, 2021, agreeing to value the Vehicle at \$19,000.00 with interest paid at 5.00%. See dkt. 24.

The motion to value collateral is denied as moot.

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

The court will issue an order.

9. [21-22483](#)-B-13 HAROLD/KATHY NORMAN OBJECTION TO CONFIRMATION OF  
[KMM](#)-1 Gregory J. Smith PLAN BY MEDALLION BANK  
8-2-21 [[18](#)]

**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 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 sustain the objection and deny confirmation of the plan.

Feasibility of the plan depends on valuing a 2017 Shadow Cruiser ("Vehicle") of Medallion Bank, as serviced by Systems & Services Technologies, Inc. ("Creditor"), at \$14,000.00. The Debtors and Creditor have stipulated to the Vehicle's value at \$19,000.00 with interest paid at 5.00%. See dkt. 24.

The plan filed July 6, 2021, 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.