

**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 17, 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 17, 2024 at 1:00 p.m.

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1. [24-90400](#)-B-13 JASON/MICHELLE JARRETT OBJECTION TO CONFIRMATION OF
[LGT-1](#) Len ReidReynoso PLAN BY LILIAN G. TSANG
8-26-24 [[12](#)]

Final Ruling

The Chapter 13 Trustee ("Trustee") has objected to confirmation of the Chapter 13 Plan filed July 16, 2024 ("Plan"). Dkts. 3, 12. Debtors Jason and Michelle Jarrett ("Debtors") filed a response. Dkt. 15.

The court has reviewed the objection, response, and all related documents. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1).

It appears that the Debtors have resolved the Trustee's objections related to expenses, Joint Debtor's unpaid wages from a previous employer, a tax refund, and a potential claim for income from the California State Licensing Board by filing amended schedules. Debtors also amended Form 122C-1 to remove business expenses. The only issue that remains is whether this Chapter 13 case is a business or nonbusiness case, which only affects Debtors' attorney's claim to fees. If this is a business case, the Debtors' attorney may charge the Debtors a no-look fee of up to \$12,500.00, otherwise, if this is a nonbusiness case the permissible no-look fee is limited to \$8,500.00. See Local R. Bankr. P. 2016-1(c)(1)(A).

Debtors' attorney asserts this is a business case. Debtors' attorney contends this is a business case because 81.8% of the overall debt is attributable to business debts, specifically \$245,947.00 of \$300,594.00 in total debt. In that regard, the plan provides for total attorney's fees of \$12,000.00. More precisely, the plan states that Debtors' attorney accepted \$3,000.00 before the bankruptcy case was filed and it proposes to pay Debtors' attorney an additional \$9,000.00 through the plan. Dkt. 3, § 3.05.

The Trustee asserts that this is a nonbusiness case because the Debtors' business closed in April 2024 and the Debtors have not had income since then, the household's aggregate gross income going forward is not attributable to business or rental operations, and Schedule I does not include any income from a business.

The court agrees with the Trustee.

Local Bankr. Rule 2016-1(c)(1)(B) states as follows:

For the purposes of this subdivision, there is a rebuttable presumption that any Chapter 13 case is a nonbusiness case. That presumption may be rebutted by a preponderance of the evidence where the original petition, schedules, and statements demonstrate that: (1) the debtor(s) or a contributing non-filing member of the debtor(s)' household has an ownership interest in a business, e.g., sole proprietorship, partnership, or an entity, i.e., an S corporation or LLC, in which

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profits and losses are passed through to the equity holders for tax purposes, or in one or more rental properties; **and** (2) **either** (A) without consideration of the amount due any purchase money residential mortgage lender, a significant portion of the scheduled debt arose out of business or rental operations; **or** (B) a significant portion of the debtor(s)' and/or contributing non-filing member of the debtor(s)' household's aggregate gross going forward income is attributable to the business or rental operations.

(Emphasis added).

Assuming, as Debtors' attorney asserts, that 81.8% of overall debts are business debts, that would satisfy Local Bankr. R. 2016-1(c)(1)(B)(2)(A). But that is not enough. In addition to either 2016-1(c)(1)(B)(2)(A) or 2016-1(c)(1)(B)(2)(B), the Debtors' attorney must also satisfy 2016-1(c)(1)(B)(1) to rebut the nonbusiness case presumption. That provision requires evidence that "the debtor(s) . . . has an ownership interest in a business[.]". By the Debtors' own admission, the Debtors do not-and when the Chapter 13 petition was filed did not-have an ownership interest in a business. According to the Statement of Financial Affairs, the Debtors' business "existed" from "4/2016 to 4/2024." Dkt. 1 at 48. The court is hard-pressed to comprehend how the Debtors could have any interest in a nonexistent business now or when this bankruptcy case was filed.

Further support for the conclusion that this is not a business case is found in the business case provision of § 1304 which uses the term "engaged in business" to refer to a debtor and define the scope of a Chapter 13 business case. See e.g., 11 U.S.C. § 1304(a) ("A debtor that is self-employed and incurs trade credit in the production of income from such employment is engaged in business."); § 1304(b) ("a debtor engaged in business may operate the business"); § 1304(c) ("A debtor engaged in business shall perform the duties of the trustee"). "[T]he 'engaged in' phrase is used throughout the Bankruptcy Code, and it always means the same thing: that a person or entity is *presently* doing something." *In re Ikalowych*, 629 B.R. 261, 281 (Bankr. D. Colo. 2021) (emphasis added). Viewed in this context, a Chapter 13 business case is one in which there is a present, ongoing, or operating business. As noted above, that is not the case here and that was not the case when the petition that commenced this case was filed.

Because all other objections are resolved, the court will confirm the plan with an attorney's fees reduction to account for the nonbusiness classification of his case. To the Debtors' substantial benefit, the Debtors' attorney's fees will be reduced from the \$12,000.00 the Debtors' attorney initially charged the Debtors, and which is currently proposed in the plan, to \$8,500.00. According to the Trustee, this results in a reduction to \$91.67 in § 3.06 of the plan. The Trustee may provide for this reduction and the amendment to § 3.06 in an order confirming the plan.

Separately, with the reduction of the no-look fee the Debtors are charged from \$12,000.00 to \$8,500.00, the \$3,000.00 that the Debtors' attorney accepted from the Debtors before the case was filed violates Local Bankr. R. 2016-1(c)(3) which allows for a no-look fee retainer of no more than 25%. On an \$8,500.00 no-look fee, Debtors' attorney is entitled to a retainer of no more than \$2,125.00. Accordingly, Debtors' attorney is **ORDERED** to return \$875.00 to the Debtors and provide proof of returned funds, both by Friday, September 20, 2024.¹

With the attorney's fees adjustment, the plan complies with 11 U.S.C. §§ 1322 and 1325(a).

¹If this affects § 3.06 of the plan, the Trustee is authorized to make an appropriate adjustment in the confirmation order.

The objection is ORDERED SUSTAINED IN PART AND OVERRULED IN PART for reasons stated in the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED to the extent and 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.

2. [20-90317](#)-B-13 DAVID/MARIA GONZALEZ
[TLC-1](#) Tamie L. Cummins

MOTION FOR PURCHASE OF VEHICLE
8-30-24 [[46](#)]

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 grant the motion for purchase of a 2019 Nissan Maxima.

The motion seeks permission to purchase a 2019 Nissan Maxima ("Vehicle"), the total purchase price of which is \$16,000.00, to replace a 2016 Nissan Maxima involved in an accident on August 2, 2024, and deemed a total loss. As a result, Debtors received an insurance payout of \$15,108.76. The difference in purchase price and the insurance proceeds is \$891.24, which will be gifted by Debtor's mother. Since the Vehicle will be purchased outright, Debtors state that this is not a motion to incur debt since there will be no new debt obligation, and no unsecured creditors will suffer or be harmed by the granting of this motion.

The motion to incur debt governed by Federal Rule of Bankruptcy Procedure 4001(c) does not apply in this particular circumstance. The court finds that the motion for purchase of vehicle, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

The court will issue an order.

3. [20-90768](#)-B-13 JUAN/HEIDI RUIZ
[CLB-1](#) Simran Singh Hundal

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
6-27-24 [[90](#)]

TOWD POINT MORTGAGE TRUST
2017-FRE2 VS.

Final Ruling

This matter was continued from August 13, 2024, after the court granted a stipulation between debtors Juan Ruiz and Heidi Ruiz ("Debtors") and Towd Point Mortgage Trust 2017-FRE2, U.S. Bank National Association, as Indenture Trustee ("Movant"). No response by the Debtors was filed by September 3, 2024.

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 grant the motion for relief from automatic stay.

Movant seeks relief from the automatic stay with respect to real property commonly known as 2029 La Villa Rose Court, Modesto, California (the "Property"). Movant has provided the Declaration of Roselia Chavez to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Chavez Declaration states that there are three post-petition payments in default totaling \$4,377.70.

The Chapter 13 Trustee had filed a response stating that Debtors' plan provided for Class 1 creditor, Select Portfolio Servicing (servicer for Creditor), for Debtors' primary residence with pre-petition arrears. Creditors filed Claim 3-1 listing pre-petition arrears of \$15,170.31 and post-petition mortgage payments of \$1,564.28. The most recent disbursement to Select Portfolio Servicing was processed on November 30, 2023, in the amount of \$1,925.95 pursuant to its Notice of Mortgage Payment Change filed on June 22, 2023. Trustee states that it disbursed \$15,170.31 to the pre-petition mortgage arrears claim and \$57,697.53 to the on-going, post-petition mortgage claim of Creditor. Creditor's exhibits indicate that Debtors made payments directly to Creditor since December 2023, with payments being slightly behind (dkt. 95, p. 53).

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$444,595.77 as stated in the Relief From Stay Summary Sheet. The value of the Property is determined to be \$360,000.00 as stated in Schedules A/B and D filed by Debtors.

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, including defaults in post-petition payments which have come due. 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 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, it appears that there is no equity in the Property. Moreover, the Debtors have failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012). [This being a Chapter 7 case, the property is *per se* not necessary for

an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The 14-day stay of enforcement under Rule 4001(a)(3) is not 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.

4. [23-90377](#)-B-13 GUSTAVO JIMENEZ
[CLH](#)-3 Charles L. Hastings

MOTION TO AMEND
8-19-24 [[74](#)]

Final Ruling

Debtor's counsel Charles L. Hastings ("Counsel") seeks to amend the court's final ruling on Counsel's motion for fees at dkt. 72. Counsel states that he did not seek fees under the "no-look" fee provisions. Instead, counsel contends that the applicable section in this matter is Local Rule 2016-1(b), which provides "*[e]xcept for fees and costs earned and withdrawn from the attorney's trust account before the date of the petition, any retainer received from the debtor(s) and/or a third party shall be maintained in the attorneys' trust account.*" Emphasis added. Counsel states that the fees drawn in this case in the amount of \$4,087.23 were fees and costs earned and withdrawn from the attorney trust account before the filing of the petition, for services rendered through that time.

Counsel also acknowledges that the plan at Line 3.05 and the Rights and Responsibilities were potentially misleading for stating that \$0.00 was paid prior to the filing of the case.

Given the information provided by Counsel, the motion to amend is granted and attorney's fees in the amount of \$2,717.25 as originally requested is approved.

The motion is ORDERED GRANTED for fees of \$2,717.25.

The court will issue an order.

5. [24-90384](#)-B-13 STEPHEN/MASHELL GUGEL
[LGT-1](#) Christian J. Younger

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
8-28-24 [[18](#)]

Final Ruling

The *initial* Chapter 13 Plan filed July 10, 2024, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to September 24, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

Feasibility depends on the granting of a motion to value collateral of First Tech Federal Credit Union. That motion was denied without prejudice on September 3, 2024.

The plan filed July 10, 2024, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), party in interest shall have until 5:00 p.m. on September 20, 2024, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtors, the Debtors' attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained 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 24, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on September 24, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED and CONTINUED for reasons stated in the minutes.

The court will issue an order.

6. [24-90206](#)-B-13 LUIS MEJIA AND MARTA CONTINUED OBJECTION TO
[CAS](#)-1 SAAVEDRA CADENA CONFIRMATION OF PLAN BY
Thru #7 Drew Henwood CREDITOR FORD MOTOR CREDIT
COMPANY LLC
6-17-24 [[32](#)]

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 the objection, the Debtors filed an amended plan on September 13, 2024. The confirmation hearing date for the amended plan must still be set. Nonetheless, the earlier plan filed May 15, 2024, is not confirmed.

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

The court will issue an order.

7. [24-90206](#)-B-13 LUIS MEJIA AND MARTA CONTINUED OBJECTION TO
[LGT](#)-1 SAAVEDRA CADENA CONFIRMATION OF PLAN BY LILIAN
Drew Henwood G. TSANG
6-26-24 [[36](#)]

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 the objection, the Debtors filed an amended plan on September 13, 2024. The confirmation hearing date for the amended plan must still be set. Nonetheless, the earlier plan filed May 15, 2024, is not confirmed.

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

The court will issue an order.

8. [24-90232](#)-B-13 JESSI LAMANUZZI
[LGT](#)-1 Chad M. Johnson

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LILIAN
G. TSANG
6-17-24 [[15](#)]

Final Ruling

This matter was continued from September 10, 2024, to allow any party in interest to file a response by 5:00 p.m. Friday, September 13, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 28 sustaining the objection, shall become the court's final decision. The continued hearing on September 17, 2024, at 1:00 p.m. is vacated.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.