

**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 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
Sacramento, California

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

1. [23-23601](#)-B-13 NATALIE SMITH MOTION TO MODIFY PLAN
 [HWW](#)-3 Hank W. Walth 7-17-24 [[38](#)]

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 Debtor has 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.

2. [24-23806](#)-B-13 JEREMY WYGAL MOTION TO EXTEND AUTOMATIC STAY
MS-1 Mark Shmorgon 8-30-24 [[11](#)]
Thru #3

Tentative 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 and may appear at the hearing to offer oral argument.

The court's decision is to grant the motion to extend the automatic stay.

Debtor seeks to have the automatic stay extended beyond 30 days pursuant to 11 U.S.C. § 362(c)(3). This is the Debtor's second bankruptcy petition pending in the past 12 months.¹ The Debtor's prior bankruptcy case was dismissed on August 15, 2024, for failure to make plan payments (case no. 22-21264, dkt. 84). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018). This motion was filed within 30 days of the filing of the instant chapter 13 case.

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

Debtor asserts that he fell behind plan payments in the prior case because there was fraudulent activity with his bank account. The issues have since been resolved and Debtor believes that he will be able to keep up with plan payments.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

The court will issue an order.

3. [24-23806](#)-B-13 JEREMY WYGAL MOTION TO VALUE COLLATERAL OF
MS-2 Mark Shmorgon CONSUMER PORTFOLIO SERVICES

¹This is Debtor's third overall filed bankruptcy. His first one was dismissed two years ago on August 15, 2022, for failure to make plan payments. Case no. 21-22925.

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 Consumer Portfolio Services at \$10,088.00 and continue the matter to September 24, 2024, at 1:00 p.m.**

Debtor moves to value the secured claim of Consumer Portfolio Services ("Creditor"). Debtor is the owner of a 2019 Kia Forte S Sedan 4D ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$10,088.00 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. 4-1 filed by Consumer Portfolio Services 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 on December 20, 2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$18,957.51 based on Claim No. 4-1. 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 \$10,088.00. 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.

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 20, 2024, 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 27, 2024, 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 27, 2024, at 1:00 p.m.

Tentative 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 and may appear at the hearing to offer oral argument.

The court's decision is to grant the motion to extend automatic stay.

Debtor seeks to have the automatic stay extended beyond 30 days pursuant to 11 U.S.C. § 362(c)(3). This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on July 17, 2024, for failure to make plan payments (case no. 22-22606, dkt. 51). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018). This motion was filed within 30 days of the filing of the instant chapter 13 case.

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor states that he became delinquent in his prior case due to unexpected expenses since his mother-in-law became very ill, bedridden, and Debtor and his wife began taking care of her until they were no longer able to lift her. She was thereafter transferred to a skilled nursing facility, where Debtor paid out of pocket for her expenses. Debtor eventually applied for insurance on her behalf, which was approved in April 2024 but by that time Debtor was behind financially. Debtor's mother-in-law has now been transferred to a permanent facility where she is a hospice patient. Debtor's household expenses have since stabilized, and he is able to maintain timely, regular plan payments moving forward. Debtor contends that the extension of the automatic stay is necessary for him to keep his primary residence.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

The court will issue an order.

5. [24-23014](#)-B-13 SENGPHET/SYPHONG OBJECTION TO CONFIRMATION OF
[LGT](#)-1 PHIMMASENE PLAN BY LILIAN G. TSANG
Matthew J. DeCaminada 8-29-24 [[25](#)]

CONTINUED TO 10/08/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 10/03/24.

Final Ruling

No appearance at the September 17, 2024, hearing is required. The court will issue an
order.

6. [23-20821](#)-B-13 RYAN QUINN
[TLA](#)-1 Thomas L. Amberg

MOTION TO MODIFY PLAN
8-12-24 [[40](#)]

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). The Chapter 13 Trustee filed an objection and subsequently withdrew it. 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 Debtor has 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.

7. [24-22725](#)-B-13 RYAN AMODEO AND OEURN MOTION FOR RELIEF FROM
[SKI-1](#) SNGUON AUTOMATIC STAY
Peter G. Macaluso 8-13-24 [[17](#)]
MERCEDES-BENZ FINANCIAL
SERVICES USA LLC VS.

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 for relief from automatic stay.

Mercedes-Benz Financial Services USA LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2021 Mercedes-Benz GLB (the "Vehicle"). The moving party has provided the Declaration of Taylor to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Taylor Declaration states that Debtors defaulted on their first payment and the account was charged off on November 23, 2022, due to account delinquency, thus triggering the default provision of the Retail Installment Sales Contract, Section 3b. As of August 2, 2024, the account is in default for the entire balance of \$44,626.77.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$44,626.77, as stated in the Taylor Declaration. Noteworthy is that Movant's claim is not provided anywhere in Debtors' schedules.

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 since the Debtors and the estate have not made post-petition payments. 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, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is 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.

8. [24-22927](#)-B-13 ELIZABETH WILSON OBJECTION TO CONFIRMATION OF
[LGT](#)-1 Kathleen H. Crist PLAN BY LILIAN G. TSANG
8-22-24 [[14](#)]

CONTINUED TO 9/24/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 9/19/24.

Final Ruling

No appearance at the September 17, 2024, hearing is required. The court will issue an
order.

9. [19-21550](#)-B-13 DANIEL/JAMIE DOLE
[JCK](#)-3 Gregory J. Smith

MOTION TO SELL AND/OR MOTION TO
INCUR DEBT
8-30-24 [[62](#)]

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 to sell and to incur debt.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell property described as 949 Brenda Lee Drive, Manteca, California ("Property"). Debtors state that they have completed all plan payments of \$62,424.00 on March 8, 2024. Debtors also state that with the Property sold, they seek authorization to purchase a home at 654 Kibbie Court, Manteca, California, for \$940,000.

Creditor Lakeview Loan Servicing ("Creditor") has filed a limited opposition stating that the Debtors do not indicate the sale price of the Property, the amount of proceeds that will be generated from the sale, and how proceeds will be disbursed. The court agrees with Creditor since no purchase agreement or any exhibits have been filed by Debtors.

Due to the lack of evidence, the motion to sell and to incur debt is denied without prejudice.

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

The court will issue an order.

10. [24-22951](#)-B-13 NATHAN SWANN
[LGT-1](#) Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
8-26-24 [[19](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankr. R. 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 Bankr. R. 9014-1(f)(1)(C). A written reply has been filed to the objection.

All objections have been resolved and the court has determined that oral argument is not necessary. See Local Bankr. R. 1001-1(f), 9014-1(h). This matter will be decided on the papers. No appearance at the hearing is necessary.

The court's decision is to overrule the objection and confirm the plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that it fails the liquidation test pursuant to 11 U.S.C. § 1325(a)(4). Debtor filed a response stating that he has amended Schedule C and that the plan meets the liquidation analysis at 0%.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed July 16, 2024, is confirmed.

The objection is ORDERED OVERRULED 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.

11. [24-23051](#)-B-13 JOHN KEIFER
[JCW](#)-2 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY CITIBANK, N.A.
8-28-24 [[23](#)]

CONTINUED TO 10/08/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 10/03/24.

Final Ruling

No appearance at the September 17, 2024, hearing is required. The court will issue an
order.

12. [24-20254](#)-B-13 MARLON MAYO
[EAM](#)-3 Peter G. Macaluso

CONTINUED MOTION TO DISMISS
CASE
7-2-24 [[67](#)]

Final Ruling

The hearing on the motion to dismiss filed by secured creditor DPS Finance Company ("Creditor") is **CONTINUED** to **October 29, 2024, at 1:00 p.m.** to coincide with the Chapter 13 Trustee's motion to dismiss set for hearing on the same date/at the same time.

According to Creditor's proof of claim, Creditor holds a secured claim of \$361,272.36 based on a deed of trust recorded on the Debtor's principal residence located at 6052 Saxton Court, Stockton, California, which Creditor values in the proof of claim at \$520,000.00. See Claim 6-1. As of July 2024, Creditor further calculates its secured claim at \$385,416.00, which includes accruing interest and attorney's fees. See dkt. 67 at 2:2-9.

Using the higher of the two claim amounts, there is approximately \$134,584.00 in equity in the Debtor's residence which translates to an equity cushion of at least 25.88%. Accordingly, Creditor is - and will remain - adequately protected during the short continuance period. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984) (holding that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments).

No appearance at the September 17, 2024, hearing is required.

The court will issue an order.

13. [24-21561](#)-B-13 RONALD PERRIN AND YUVETTA MOTION FOR RELIEF FROM
[RDW](#)-3 PRYOR AUTOMATIC STAY AND/OR MOTION
G. Michael Williams FOR ADEQUATE PROTECTION
8-16-24 [[50](#)]

PAUL J. NEWMAN, AS TRUSTEE
OF THE PAUL J. NEWMAN TRUST
DATED 10/7/1992 AND RESTATED
5/30/2013 VS.

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 for relief from automatic stay.

Paul J. Newman, Trustee of the Paul J. Newman Trust dated 10/7/1992 and Restated on 5/30/2013, its successors and/or assignees ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1746 East Market Street, Stockton, California (the "Property"). Movant has provided the Declaration of Paul J. Newman to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Newman Declaration states that there are 20 payments past due, which consists of 16 pre-petition payments in default totaling \$24,533.28 and 4 post-petition payments in default totaling \$6,133.32.

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 \$240,316.07 as stated in the Newman Declaration. The value of the Property is determined to be \$550,000 as stated in Schedules A/B, C, and D filed by Debtor.

Discussion

In a motion brought under § 362(d)(1), the party seeking relief bears the burden on the issue of the debtor's equity - or lack thereof - in property. 11 U.S.C. § 362(g)(1). Movant has not met this burden.

Movant stated in its Relief From Stay Summary Sheet that the Property has a valuation of \$295,640 to \$326,760. Movant does not explain why there is a substantial decrease in value from that of \$530,000, which was provided just 1 year ago in its prior Motion for Relief From Stay, dkt. 78, case no. 23-20748.

The court will instead rely on Debtor's valuation of \$550,000 as provided in Schedules A/B, C, and D. Schedules are filed under penalty of perjury. See Fed. R. Bankr. P. 1008. Some courts treat schedules as evidentiary admissions under Federal Rule of Evidence 801(d)(2). *Heath v. American Express Travel Related Services Co., Inc. (In re Heath)*, 331 B.R. 424, 431 (9th Cir. BAP 2005). Others treat them as judicial admissions. *In re Roots Rents, Inc.*, 420 B.R. 28, 40 (Bankr. D. Utah). Whatever their status, schedules carry evidentiary weight. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969-70 (9th Cir. 2012). Therefore, for purposes of this motion only, the court values the Property at \$550,000.00.

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Movant claims it is owed \$240,316.07 as of August 16, 2024. Based on the Property's \$550,000.00 value, that leaves equity of

\$309,683.93, which in turn creates an equity cushion of 56.306%. Movant is therefore adequately protected.

Nonetheless, given that Debtors did not oppose the motion and are not making post-petition payments, the court will assume that Debtors do not want the Property. Therefore, despite the equity cushion available to Movant and given Debtors' failure to take any action with respect to the Property, the court will grant Movant's request for relief from automatic stay.

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.

14. [24-22973](#)-B-13 MARIA SANCHEZ OBJECTION TO CONFIRMATION OF
[KJC](#)-1 Len ReidReynoso PLAN BY WILLIAM A. SCHUCKMAN,
Thru #15 CO-TRUSTEE OF THE SCHUCKMAN
FAMILY 2008 REVOCABLE TRUST
8-27-24 [[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). 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 Debtor filed an amended plan on September 11, 2024. The confirmation hearing for the amended plan is scheduled for October 15, 2024. The earlier plan filed July 8, 2024, is not confirmed.

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

The court will issue an order.

15. [24-22973](#)-B-13 MARIA SANCHEZ OBJECTION TO CONFIRMATION OF
[LGT](#)-1 Len ReidReynoso PLAN BY LILIAN G. TSANG
8-26-24 [[16](#)]

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 Debtor filed an amended plan on September 11, 2024. The confirmation hearing for the amended plan is scheduled for October 15, 2024. The earlier plan filed July 8, 2024, is not confirmed.

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

The court will issue an order.

16. [24-22675](#)-B-13 RATTANA POK
[RMP-1](#) G. Michael Williams
OBJECTION TO CONFIRMATION OF
PLAN BY REAL TIME SOLUTIONS,
INC.
8-1-24 [[30](#)]

Final Ruling

The *initial* Chapter 13 Plan filed July 18, 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.**

Objecting creditor Real Time Solutions ("Creditor") holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$167,893.63 in pre-petition arrears. Creditor acknowledges that the parties are in state court litigation for the disputed arrearages, but nonetheless opposes confirmation on grounds that the plan does not provide for cure of pre-petition arrears in the event that Debtor does not prevail in the state court litigation and does not provide for payment of post-petition installment payments. Since Creditor's debt is not yet determined, the plan is speculative and may not be feasible.

The plan filed July 18, 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 Debtor, the Debtor's 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.

17. [24-22989](#)-B-13 DANIEL GAY AND ELVIA OBJECTION TO CONFIRMATION OF
[LGT](#)-1 CERNA-GAY PLAN BY LILIAN G. TSANG
Arete Kostopoulos 8-22-24 [[29](#)]

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 August 26, 2024. The confirmation hearing for the amended plan is scheduled for October 22, 2024. The earlier plan filed July 9, 2024, is not confirmed.

The objection is ORDERED OVERRULED 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 notice required by 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). The defaults of the non-responding parties are entered.

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 to sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell property described as 2236 Mozart Avenue, Lathrop, California ("Property").

Proposed purchasers Kumar Milind and Deepali Himanshu have agreed to purchase the Property for \$800,000.00. The net proceeds after payment of the current mortgage, closing costs, and fees will be \$237,555.95. Debtors intend to disburse all net sales proceeds to the Trustee and pay off the remainder of their plan at 100%.

The Trustee has filed a response and, while not opposing the motion, requests that the following provisions be included in the order approving the sale of real property:

1. The sale is approved provided all liens, if any, are paid in full in a manner consistent with the plan, notwithstanding relief of stay that has been entered.
2. The Trustee shall approve the escrow and title company to be used in connection with the transaction.
3. The Trustee shall approve the estimated closing statement to be prepared in connection with the sale, and when approved, disbursement may only be made in accordance with the approved estimated closing statement.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate. The motion is granted.

The motion is ORDERED GRANTED.

Debtors' attorney shall submit an order consistent with the Trustee's standard sale language. The order shall be approved by the Trustee.

19. [24-22700](#)-B-13 NATALIE PELTON CONTINUED OBJECTION TO
[LGT](#)-1 Richard L. Jare CONFIRMATION OF PLAN BY LILIAN
Thru #20 G. TSANG
8-13-24 [[43](#)]

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. 48, 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.

20. [24-22700](#)-B-13 NATALIE PELTON CONTINUED OBJECTION TO
[SKI](#)-1 Richard L. Jare CONFIRMATION OF PLAN BY EXETER
FINANCE LLC
8-7-24 [[36](#)]

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. 49, 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.

21. [24-22879](#)-B-13 ALLISON MELLO MCSHEA AND CONTINUED OBJECTION TO
[LGT](#)-1 ZACHARY MCSHEA CONFIRMATION OF PLAN BY LILIAN
Leo G Spanos G. TSANG
8-13-24 [[14](#)]

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. Although no response was filed, Debtors did file an amended plan with a confirmation hearing date of November 5, 2024. Therefore, the court's conditional ruling at dkt. 18 and the continued hearing on September 17, 2024, at 1:00 p.m. shall be vacated. The objection to confirmation is overruled as moot.

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

The court will issue an order.