

**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 19, 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 19, 2023 at 1:00 p.m.

1. [22-21028](#)-B-13 DORIAN/CATHERINE ANNE MOTION TO SELL
[MRL](#)-2 COLBERT 8-30-23 [[50](#)]
Thru #3 Mikalah Liviakis

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 grant the motion to sell and continue the matter to September 26, 2023, at 1:00 p.m.**

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 a 2010 Ford F-150 with approximately 219,050 miles to Desmond Sarb ("Buyer") for \$5,500.00. The Buyer located the Debtors by responding to an ad placed by Debtors on OfferUp. Debtors believe that this is a fair price for the Property and represents the best market value that can be obtained under the circumstances. A true and correct copy of the Bill of Sale is attached as Exhibit A, dkt. 52.

Debtors request that the Court waive the 14-day stay of Fed. R. Bankr. P. 6004(h) since the Buyer may not want to wait much longer to complete the purchase, and it may be difficult for the Debtors to secure another buyer for a vehicle involved in bankruptcy and because the vehicle is declining in value.

The vehicle is owned outright by the Debtors. The sale proceeds of \$5,500.00 will go directly to the Debtors who intend to use it toward the purchase of a replacement vehicle.

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 conditionally granted and the 14-day stay of Fed. R. Bankr. P. 6004(h) is waived.

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, January 7, 2023, to file and serve an opposition or other response to the motion. See Local Bankr. R. 3007-1(b)(2). 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 January 11, 2023, at 1:00 p.m. will be vacated.

September 19, 2023 at 1:00 p.m.

If an opposition or response is timely filed and served, the court will hear the motion on January 11, 2023, at 1:00 p.m.

2. [22-21028](#)-B-13 DORIAN/CATHERINE ANNE MOTION TO INCUR DEBT
 [MRL](#)-3 COLBERT 8-30-23 [[54](#)]
 Mikalalah Liviakis

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 the motion without prejudice.

The motion seeks permission to purchase a 2013 Audi S6 with 70,039 miles, the total purchase price of which is \$21,500.00, with monthly payments of \$452.00 for 59 months and \$373.80 for one month. This vehicle will replace a Ford F-150 that they seek to sell. See Item #1, MRL-2. Debtors assert that their Ford has 219,050 miles and uses a lot of gas. The replacement vehicle has less miles and better gas efficiency.

Debtors state that they are approved by Merco Credit Union for 16.49% interest over 60 months. They intend to pay a down payment of \$4,000.00 to the seller and \$1,500.00 to Merco Credit Union using the proceeds from the sale of the Ford.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, the transaction is not in the best interest of the Debtor. Although the court recognizes that the replacement vehicle is used, the loan calls for a substantial interest charge of 16.49% and monthly payments of \$452.00 for 59 months.

The motion is denied without prejudice.

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

The court will issue an order.

3. [22-21028](#)-B-13 DORIAN/CATHERINE ANNE MOTION TO MODIFY PLAN
 [MRL](#)-4 COLBERT 8-14-23 [[42](#)]
 Mikalalah Liviakis

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 Debtors have 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. Counsel for the Debtors 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.

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). 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 permit the requested modification and not confirm the modified plan.

Debtor's plan is not feasible under 11 U.S.C. §1325(a)(6). Section 7.01 Nonstandard Provisions for Section 2.01 of Debtor's plan provides for plan payments to increase from \$1,634.00 to \$2,294.00 beginning August 2023. Debtor has failed to file adequate documentation to show that she can afford this increased plan payment.

Although amended schedules were filed on September 6, 2023, information appears inaccurate. Amended Schedule I states that Debtor has been employed one month with "Professtinal Community Managenent of CA"; however, this is an identical employment duration to that listed in Schedule I filed on November 1, 2022. If she is still employed there, Debtor provides no explanation as to why her salary has reduced to \$0.00. Separately, no declaration has been filed by a family member who will provide financial support of \$1,671.00 per month. Without accurate information and a declaration, it cannot be determined whether the proposed plan is feasible.

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.

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). 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 permit the requested modification and not confirm the modified plan.

First, pursuant to the terms of Debtors' proposed plan, the total amount to be paid to the Trustee through August 2023 is \$228,131.80. However, the Chapter 13 Trustee records indicate that Debtors have paid a total of \$228,623.30 through August 2023. Accordingly, Debtors' plan incorrectly accounts for payments already made to the Trustee.

Second, the Debtors' provided the Trustee with six months bank statements from Chase Bank. However, amended Schedule A/B filed on filed December 9, 2020, fails to list this account with Chase Bank.

Third, the Debtors provided the Trustee with copies of bank statements for Chase Bank that covered the period from December 23, 2022, to August 22, 2023, which show large deposits and transfers totaling \$163,581.52, or \$20,447.69 per month. Debtors' Schedule I lists a net monthly income of only \$8,084.31. Additional clarification is needed as to the source of the large deposits and transfers.

Fourth, amended Schedule A/B filed on December 9, 2020, fails to list an account with MSPBNA. The current six months of statements shall be provided to the Trustee.

Fifth, amended Schedule A/B lists three separate accounts with Chase Bank. The most current six months of statements for these accounts shall be provided to the Trustee.

At this time, it does not appears that Debtors' plan is proposed in good faith under 11 U.S.C. § 1325(a)(3). 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.

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). 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 permit the requested modification and not confirm the modified plan.

First, the Debtor's plan fails the liquidation test of 11 U.S.C. §1325(a)(4). Based on Debtor's schedules Debtor's plan must pay 0.82% to Debtor's general unsecured creditors in order to meet the liquidation test. The Debtor's plan provides for 0.50% dividend to general unsecured creditors and therefore fails the liquidation test.

Second, Debtor's plan is not feasible under 11 U.S.C. §1325(a)(6). The NonStandard Provisions for Section 7.01 of Debtor's plan proposes a monthly payment of \$795.00 a month starting August 2023 to the end of a 60-month plan. Debtor has failed to provide admissible evidence that the plan is mathematically feasible. The Trustee's calculations indicate that Debtor's average plan payment will need to be at least \$839.00 in order for the plan to be feasible as paying unsecured creditors 0.82%.

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.

The court will issue an order.