

**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 20, 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.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

September 20, 2022 at 1:00 p.m.

1. [22-90202](#)-B-13 JESUS/VERNA LISA SERNA MOTION TO AVOID LIEN OF BANK OF
[SSH-1](#) Simran Singh Hundal AMERICA, N.A.
Add #8 8-17-22 [[15](#)]

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 judicial lien.

This is a request for an order avoiding the judicial lien of Bank of America, N.A. ("Creditor") against the Debtors' property commonly known as 3308 Georgeann Place, Ceres, California ("Property").

A judgment was entered against Debtor Jesus Serna in favor of Creditor in the amount of \$11,363.18. An abstract of judgment was recorded with Stanislaus County on March 30, 2022, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$442,646.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$429,900.00 on Schedule C. All other liens recorded against the Property total \$248,683.42.

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 Debtors' 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.

2. [19-90846](#)-B-13 DUY/VANNA TRAN
[HWW](#)-8 Hank W. Walth

MOTION TO MODIFY PLAN
8-2-22 [[131](#)]

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.

3. [19-90275](#)-B-13 RICHARD/DOROTHY MOTION TO WAIVE SECTION 1328
[PLG-1](#) GRUNDMEIER CERTIFICATE REQUIREMENT, AND
Rabin Pournazarian CERTIFICATE OF CHAPTER 13
DEBTOR REGARDING 11 U.S.C.
SECTION 22(Q) EXEMPTIONS AND
WAIVER OF THE REQUIREMENT FOR
DEBTOR TO FILE NOTICE OF DEATH
WITHIN SIXTY (60) DAYS OF DEATH
9-6-22 [[25](#)]

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 and continue the matter to September 27, 2022, at 1:00 p.m.**

Joint Debtor Dorothy Grundmeier gives notice of the death of her husband Debtor Richard Grundmeier and requests that the court waive: (1) the requirement for Debtor to complete the § 1328 certification requirements for entry of discharge, (2) the requirement that each debtor file a Certificate of Chapter 13 Debtor Regarding 11 U.S.C. § 522(g) Exemptions (Form EDC 3-191), and (3) that the notice of death be filed within 60 days of the death of a debtor under Local Bankr. R. 1016-1(a).

Joint Debtor does not state in the motion or declaration her intent to be appointed as the representative for or successor to the deceased Debtor. Local Bankr. R. 1016-1(a).

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

- 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];
- 2) Continued administration of a case under chapter 11, 12, or 13 (Fed. R. Bankr. P. 1016);
- 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications (11 U.S.C. § 1328).

Here Joint Debtor requests a waiver of the post-petition education as to deceased Debtor, and a waiver of the certification requirement for entry of discharge as to deceased Debtor. However, the motion and declaration do not state Joint Debtor's intent to be appointed as the representative for or successor to the deceased Debtor. LBR 1016-1(a).

Rule 1016 contemplates that someone must act on the debtor's behalf to continue administration of the case. Further administration of a bankruptcy case occurs, even

though the debtor died, if there is a source of payments or sufficient payments such that a discharge may be warranted. *In re Chaffer*, 2017 Bankr. LEXIS 1621, at *3 (Bankr. C.D. Cal. 2017). Here, a Chapter 13 plan was confirmed on June 18, 2019, prior to Debtor's passing, and a source of payments remained – his joint-filer and wife Dorothy. Joint Debtor appears to have made payments and maintained this plan since there is no indication that there are delinquent plan payments. Not only was further administration possible at the time of Debtor's passing, further administration successfully occurred.

Based on the evidence submitted, the court will conditionally grant the relief requested. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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 23, 2022, 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 27, 2022, 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, 2022, at 1:00 p.m.

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 hardship discharge.

Joint Debtor Kimberly Miranda ("Joint Debtor") seeks a hardship discharge after the passing of her husband debtor Rodney Miranda ("Debtor") and loss of his monthly income that would otherwise help fund monthly plan payments. Joint Debtor has her own monthly income in the form of social security disability benefits totaling \$909.00 and will supplement this with monthly life insurance proceeds of \$1,305.00 to pay toward rent that has increased from \$1,780.00 to \$1,900.00 per month. From the life insurance proceeds, Debtor proposes to use \$36,000.00 to pay the priority filed and allowed tax liabilities, and reduce the percentage to the filed and allowed general unsecured creditors to 9%. The plan will still pass the chapter 7 liquidation test. The remainder of the life insurance proceeds will need to support Joint Debtor for the next five years until she is able to receive monthly distributions from a Rollover IRA.

Discussion

After confirmation of a plan, circumstances may arise that prevent a debtor from completing a plan of reorganization. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if: (b)(1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (b)(2) creditors have received at least as much as they would have received in a chapter 7 liquidation case; and (b)(3) modification of the plan is not possible under 11 U.S.C. § 1329. 11 U.S.C. § 1328(b)(1)-(3).

Here, Joint Debtor has satisfied 11 U.S.C. § 1328(b)(1)-(3). Joint Debtor is unable to complete the remaining 36 monthly plan payments left in the confirmed plan due to circumstances out of her control, specifically the death of her Debtor and the loss of his income toward monthly plan payments. Creditors will receive as much as they will in a chapter 7 liquidation test. Joint Debtor has concurrently filed a modified plan, MSN-5, that will pay \$36,000.00 toward priority tax liabilities, which was the purpose of filing for chapter 13 relief. Any further modification is not practical since the life insurance proceeds left over will need to support Joint Debtor for the next five years until she can receive monthly distributions from the Rollover IRA.

The court grants the motion and the clerk of the court shall issue a discharge pursuant to 11 U.S.C. § 1328(b).

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

The court will issue an order.

5. [20-90482](#)-B-13 RODNEY/KIMBERLY MIRANDA MOTION TO MODIFY PLAN
[MSN](#)-5 Mark S. Nelson 8-4-22 [[61](#)]

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.

6. [19-90983](#)-B-13 KIRK TROMBLEY
[NLG-1](#) Mark S. Nelson

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
8-25-22 [[55](#)]

LAKEVIEW LOAN SERVICING, 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). 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 deny without prejudice the motion for relief from stay.

Lakeview Loan Servicing, LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1824 Victoria Court, Turlock, California (the "Property"). Movant has provided the Declaration of Cheryl Decker to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Decker Declaration states that there are 0 pre-petition payments in default but that there are 4 post-petition payments in default totaling \$6,901.04.

Opposition was filed by debtor Kirk Trombley ("Debtor") stating that he fell behind on mortgage payments after being denied payment and subsequently being terminated from his employment after testing positive for COVID-19. Debtor notified the State of California Department of Labor, which found after a hearing that Debtor's employer acted wrongly. Debtor is still waiting for further notification from the state or payment from his employer. Debtor has since found new employment.

Separately, Debtor's non-filing wife worked with Movant to obtain a loan modification, but the terms were not in the best interest of Debtor and his family. Debtor and his wife thereafter sought the help of family members and friends to come up with the \$6,901.04 to bring the mortgage payment current. Since they were unable to do so, Debtor filed a modified plan on September 12, 2022, that provides for the post-petition mortgage payments and the monthly ongoing mortgage payment to be cured and paid within 12 months. The confirmation hearing is scheduled for October 4, 2022.

Since a proposed modified plan has been filed that provides for the curing of post-petition payments owed to Movant, the motion for relief from stay is denied without prejudice.

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

The court will issue an order.

7. [21-90585](#)-B-13 MICHELLE PIMENTEL-MONTEZ MOTION FOR RELIEF FROM
[VC-1](#) David C. Johnston AUTOMATIC STAY
8-19-22 [[48](#)]

ALLY FINANCIAL INC. 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 stay.

Ally Financial Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Lexus LS (the "Vehicle"). The moving party has provided the Declaration of Alissa A. Donze to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Donze Declaration states that there are 10 pre-petition payments in default totaling \$8,086.20. Additionally, there are 8 post-petition payments in default totaling \$6,468.96.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$44,810.61, as stated in Claim No. 1-1, while the value of the Vehicle is determined to be \$35,000.00, as stated in Schedules A/B and D filed by Debtor.

The Chapter 13 Trustee filed a response stating that Movant's claim is provided for in the amended plan filed May 26, 2022, that the claim is not a purchase money security interest according to the plan, and that the Debtor and Movant stipulated to the Vehicle's value at \$40,000.00. However, the plan was denied confirmation on July 12, 2022.

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 Debtor 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 Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor 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. [22-90202](#)-B-13 JESUS/VERNA LISA SERNA
[RDG-1](#) Simran Singh Hundal
See Also #1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
RUSSELL D. GREER
8-22-22 [[21](#)]

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 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.

The Chapter 13 Trustee ("Trustee") objects to confirmation on three grounds. Two of the grounds are resolved, specifically the motion to avoid judicial lien of Bank of America, N.A. is granted at Item #1, SSH-1, and Joint Debtor Verna has provided a copy of her pay advice to the Trustee.

However, Debtors have not sufficiently explained the difference in net income listed in Schedule I (\$1,280.15) from that listed in the Profit & Loss Statements (\$623.26). Debtors assert in their response and declaration that the difference is due to a projected increase in income from currently scheduled shows. However, there is no elaboration on what "shows" is. Debtors' petition filed on June 23, 2022, lists Debtor Jesus Serna's additional employment as Craft Vendor/Owner of Island Inspired Crafts & Gifts. From this description, Debtor is in the business of selling tangible goods and is not in the business of performing entertainment shows. Even if Debtor does perform shows and future shows are scheduled, Debtors' income depends on the number of ticket sales, which is speculative. Similarly, if Debtor sells his goods at these shows, the number of and profits from sales is likewise speculative.

Therefore, the plan filed June 23, 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.