

**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 21, 2021

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

September 21, 2021 at 1:00 p.m.

1. [19-90307](#)-B-13 JAY WHITAKER MOTION TO INCUR DEBT
[AHN](#)-4 Anh H. Nguyen 8-23-21 [[96](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to conditionally grant the motion to incur debt and continue the matter to September 28, 2021, at 1:00 p.m.

The motion seeks permission to purchase real property described as 810 Grouse Berry Street, Billings, Montana, the total purchase price of which is \$390,075.00, with monthly payments of \$2,068.00. The Debtor has stable employment with Facebook as a lab manager. Debtor is looking to purchase a new home with his spouse. Guild Mortgage Company LLC has approved Debtor for a loan in amount of \$390,075.00 for a term of 30 years with an initial interest rate of 2.875%. Debtor is current on plan payments that are estimated to pay 100% of unsecured creditors. The Debtor does not intend to modify his plan.

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).

The court finds that the proposed credit, 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 conditionally 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 24, 2021, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on September 28,

September 21, 2021 at 1:00 p.m.

2021, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on September 28, 2021, at 1:00 p.m.

The court will issue an order.

Final Ruling

The motion 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, Debtor's plan is not feasible. The Nonstandard Provisions in Debtor's plan are unclear and contradictory as to the monthly plan payment to be made and the percentage paid on nonpriority unsecured claims.

Second, Debtor has not filed amended Schedules I and/or Schedule J to support the monthly plan payment of \$1,780.00 beginning July 2021.

Third, the monthly dividend payable to Class 2 creditor Ally Bank must be \$400.61 beginning July 2021 in order to pay the claim in full within the remaining months of the 60-month plan.

Fourth, Debtor's plan is not feasible. Debtor's plan proposes to "seek court authorization to refinance the existing Class 1 claim and pay all creditors, pre-petition, and post-petition arrears 100%." However, the refinance of this property is speculative and Debtor's plan does not propose to make a payment that can satisfy the plan.

Fifth, the Debtor is delinquent in the amount of \$17,905.00 under the currently confirmed plan. The Debtor's motion and declaration fail to state with particularity the grounds upon which the requested relief is based and is silent as to why the Debtor is delinquent. It cannot be determined whether the cause of the delinquency has been rectified and whether the Debtor will be able to make future plan payments.

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.

3. [21-90155](#)-B-13 GLENN/KATRINA MAROWSKI MOTION TO CONFIRM PLAN
[MJD](#)-2 Matthew J. DeCaminada 8-9-21 [[35](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

LIMA ONE CAPITAL, 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 stay.

Lima One Capital, LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 17 West Rose Street, Stockton, California (the "Property"). Movant has provided the Declaration of Jennifer Ogle to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Ogle Declaration states that Project-Mate, Inc. ("Borrower") had executed a commercial non-revolving line of credit promissory note and loan agreement made payable to Movant. The note and loan agreement were signed by Fozia Khan ("Debtor"). The principal balance of \$186,200.00 became due and payable on January 1, 2020. That payment was not made. The last payment made by Borrower was on May 15, 2020, which was applied to the April 2020 payment. As of August 20, 2021, the total amount owed under the note is approximately \$253,160.36.

There have been a total of eight bankruptcy filings in the past 22 months affecting the Property. The cases were filed by four different parties. The Debtor in the instant case is the guarantor of the loan. All eight bankruptcy cases were filed pro se with minimal documents. The prior seven have all been dismissed.

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 Debtor has 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).

Finally, the court will grant relief under § 362(d)(4), which prescribes:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .

"with respect to a stay of an act against real property under subsection (a), by a

creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

"(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

"(B) multiple bankruptcy filings affecting such real property."

There have been eight bankruptcy filings in the past 22 months affecting the Property in an effort to thwart Movant from foreclosing on the Property. The prior seven cases were filed pro se by four different parties and have been dismissed. The Debtor in the instant case is the guarantor of the loan and has filed this case pro se. The court finds that the multiple bankruptcy filings were part of a scheme to delay, hinder, or defraud creditors from exercising their rights against the Property.

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.

This order shall be binding in any other case purporting to affect the Property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing.

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.

5. [21-90164](#)-B-13 EVARISTO AVILA
[RDG](#)-1 Pro Se

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-10-21 [[17](#)]

CONTINUED TO 10/19/2021 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 10/13/2021.

Final Ruling

No appearance at the September 21, 2021, hearing is required. The court will issue an order.

6. [14-90265](#)-B-13 LEONARD/TRACY WEBSTER
[BSH](#)-8 Brian S. Haddix

MOTION TO AVOID LIEN OF VALLEY
FIRST CREDIT UNION
9-7-21 [[111](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to avoid lien and continue the matter to September 28, 2021, at 1:00 p.m.**

This is a request for an order avoiding the judicial lien of Valley First Credit Union ("Creditor") against the Debtors' property commonly known as 127 Portrait Lane, Patterson, California ("Property").

A judgment was entered against Joint Debtor in favor of Creditor in the original amount of \$8,797.32. An abstract of judgment was recorded with Stanislaus County on March 19, 2012, which encumbers the Property.

Pursuant to the court's order pertaining to a motion to value at BSH-4, the Property has an approximate value of \$275,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 on Schedule C. All other liens recorded against the Property total \$785,938.18.

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).

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 24, 2021, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on September 28, 2021, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on September 28, 2021, at 1:00 p.m.

The court will issue an order.