

**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: October 4, 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
Sacramento, California

October 4, 2022 at 1:00 p.m.

-
1. [21-23800](#)-B-13 PEGGY/JOHNNY BOYNTON MOTION TO MODIFY PLAN
[MKM](#)-1 Michael K. Moore 8-24-22 [[34](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Debtors having filed a notice of withdrawal of their motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

2. [13-27931](#)-B-13 BLANCA CANO
[BSH](#)-3 Brian S. Haddix

MOTION TO VALUE COLLATERAL OF
UNIFUND CCR PARTNERS
9-7-22 [[64](#)]

Final Ruling

The motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). However, there appears to be insufficient service of process on Unifund CCR Partners. The certificate of service lists only the U.S. Trustee and Chapter 13 Trustee as being served. No matrix was attached as stated in the certificate of service. Therefore, the court's decision is to deny the motion without prejudice.

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

The court will issue an order.

3. [22-21531](#)-B-13 MIZHGHAN ALAM
[RDG](#)-1 Pro Se
Add on #10

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
8-9-22 [[25](#)]

Final Ruling

This case having been dismissed at Item #10, RDG-3, 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.

4. [19-24371](#)-B-13 SHAWNTE/MONIQUE
[WLG](#)-3 LIVINGSTON

MOTION TO MODIFY PLAN
8-24-22 [[63](#)]

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 deny the motion to confirm as moot and overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed a motion to confirm fourth modified plan on September 26, 2022. The confirmation hearing for the modified plan is scheduled for November 29, 2022. However, the plan itself must still be filed. Nonetheless, the earlier plan filed August 24, 2022, is not confirmed.

The motion is ORDERED DENIED AS MOOT and 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 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 Debtor has 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 Debtor 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 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 Debtor has 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 Debtor 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.

7. [20-21794](#)-B-13 GREGORY/JANEE MOORE
[RDW](#)-1 Taras Kurta

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
9-8-22 [[85](#)]

LOGIX FEDERAL CREDIT UNION
VS.

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 relief from stay.

Logix Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Dodge Journey (the "Vehicle"). The moving party has provided the Declaration of Damarie DeBelius to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The DeBelius Declaration states that the loan on the Vehicle matured on December 1, 2021. Additionally, Debtors voluntarily surrendered the Vehicle to Movant on July 8, 2022. This is supported by Debtors' petition filed September 13, 2022, that lists the collateral as surrendered under Class 3.

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 payments to cure the matured loan. 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. Indeed, the Debtors have surrendered the Vehicle to Movant.

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.

Attorneys' Fees Requested

Though requested in the motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this motion. Movant is not awarded any attorneys' fees.

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. [18-26413](#)-B-13 DEBRA MAGHONEY
[RDG](#)-1 Peter G. Macaluso

CONTINUED MOTION TO DISMISS
CASE
9-13-22 [[33](#)]

Final Ruling

This matter was continued from September 27, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 30, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 37, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on October 4, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

9. [22-20214](#)-B-13 ALBERT EGU
[RDG](#)-2 Jennifer G. Lee

CONTINUED MOTION TO DISMISS
CASE
9-9-22 [[42](#)]

Final Ruling

This matter was continued from September 27, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 30, 2022. Debtor filed a motion to confirm amended plan with a scheduled confirmation hearing date of November 8, 2022, at 1:00 p.m. However, the plan itself was not filed.

Provided that the amended plan is filed by 5:00 p.m. on Tuesday, October 4, 2022, the court's conditional ruling at dkt. 46 will be vacated and the motion to dismiss case will be denied without prejudice.

The court will issue an order.

10. [22-21531](#)-B-13 MIZHGHAN ALAM
[RDG](#)-3 Pro Se
See Also #3

CONTINUED MOTION TO DISMISS
CASE
9-9-22 [[39](#)]

Final Ruling

This matter was continued from September 27, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 30, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 50,¹ granting the motion to dismiss case, shall become the court's final decision. The continued hearing on October 4, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

¹As predicted, Debtor failed to appear at the continued meeting of creditors held September 28, 2022.