

**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: October 15, 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
Modesto, California

October 15, 2024 at 1:00 p.m.

1. [24-90205](#)-B-13 THERESA/GUADALUPE SOLIS MOTION TO MODIFY PLAN
 David S. Henshaw 9-11-24 [[49](#)]

Final Ruling

The motion was not 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). Only 34 days' notice was provided. Therefore, the motion to modify plan is denied without prejudice.

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

The court will issue an order.

2. [24-90310](#)-B-13 VANNA TRAN
[JCK](#)-2 Gregory J. Smith

MOTION TO CONFIRM PLAN
9-5-24 [[31](#)]

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. 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.

3. [24-90318](#)-B-13 LENE HERNANDEZ
[SKI](#)-1 Peter G. Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-16-24 [[35](#)]

HYUNDAI CAPITAL AMERICA 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). Responses were filed by the Chapter 13 Trustee ("Trustee") and Lene Hernandez ("Debtor").

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 **continue the matter to Tuesday, November 26, 2024, at 1:00 p.m.** to be heard after the amended plan has been filed and set for hearing.

Creditor Hyundai Capital America ("Creditor") filed its motion for relief from automatic stay with regard to a 2022 Kai K-5 and set it for hearing on 28-days notice. Creditor contends that Debtor is delinquent two pre-petition payments and three post-petition payments.

A response was filed by the Trustee stating that the plan provides for adequate protection payments to Ally Financial and not to Creditor. Additionally, Trustee states that the Debtor is delinquent one plan payment for the month of September 2024.

Debtor filed an opposition acknowledging that Creditor was not correctly provided for in the plan due to an inadvertent error with no intention to hinder or delay distribution. Debtor states that she will file an amended plan and hopes to resolve the issue with Creditor.

Given the aforementioned, the motion for relief from automatic stay is continued to Tuesday, November 26, 2024, at 1:00 p.m. to provide the Debtor with sufficient time to file an amended plan and set it for hearing.

The court will issue an order.

4. [23-90079](#)-B-13 STEVEN/KELLY ROWLAND
[SSH](#)-1 Simran Singh Hundal

MOTION TO MODIFY PLAN
9-5-24 [[35](#)]

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.

Debtors' modified plan proposes to reduce plan payments and the dividend to general unsecured creditors from 100% to 60.66% based on changes in Debtors' circumstances and budget. Changes in finances include a reduced combined monthly income; an increase to Debtor's voluntary retirement; an increase by \$1,000 per month in food and housekeeping supplies; a budget of \$750 toward telephone, cell phone, internet, satellite, and cable services; and a balance owed to the Franchise Tax Board and the Internal Revenue Service. Additional documentation is needed in order for the Chapter 13 Trustee to determine the reasonableness of the expenses claimed.

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.

5. [24-90384](#)-B-13 STEPHEN/MASHELL GUGEL
[CJY-2](#) Christian J. Younger
Thru #6

MOTION TO VALUE COLLATERAL OF
FIRST TECH FEDERAL CREDIT UNION
9-13-24 [[23](#)]

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 deny without prejudice the motion value.

Debtors move to value the secured claim of First Tech Federal Credit Union ("Creditor"). Debtors are the owners of a 2020 Ford Edge ST ("Vehicle"). The Debtors seek to value the Vehicle at a value of \$24,606.00 as of the petition filing date. As the owners, Debtors' 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. 3 filed by First Tech Federal Credit Union is the claim which may be the subject of the present motion.

Discussion

The court finds issue with Debtors' valuation. First, the declaration states that the valuation of the Vehicle is based on personal knowledge and support by reports from Carfax. However, Carfax is a third-party industry source and therefore Debtors' opinion of value is based on hearsay. Fed. R. Evid. 801-803; see also *In re Guerra*, 2008 WL 3200931, *2 n.4 (Bankr. E.D. Cal. 2008) ("Filed with Guerra's declaration was an unauthenticated document titled: 'Edmonds.com True Market Value Pricing Report.' The court has not considered this attachment in that it is inadmissible hearsay[.]"). Second, the declaration states that the valuation is a "fair market value." The standard here must be a retail valuation, taking into account the condition of the car. See 11 U.S.C. § 506(a).

In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The time value is determined is the date of filing of the petition without deduction for costs of sale or marketing. *Id.*

The Debtors have not persuaded the court regarding their position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

The court will issue an order.

6. [24-90384](#)-B-13 STEPHEN/MASHELL GUGEL CONTINUED OBJECTION TO
[LGT](#)-1 Christian J. Younger CONFIRMATION OF PLAN BY LILIAN
G. TSANG
8-28-24 [[18](#)]

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.

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.

Feasibility depends on the granting of a motion to value the collateral of First Tech Federal Credit Union. That motion was denied without prejudice at Item #5, CJY-2.

The plan filed June 10, 2024, 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.

7. [09-93999](#)-B-13 ERIC/RASHONDA MELLO
Ann Marie Friend

MOTION FOR PAYMENT OF UNCLAIMED
FUNDS IN THE AMOUNT OF
\$1659.02 WITH CITIBANK N.A
9-10-24 [[81](#)]

CASE CLOSED: 01/21/14

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 payment of unclaimed funds.

Citibank N.A. ("Movant") has filed the instant Motion for Payment of Unclaimed Funds and seeks to recoup the sum of \$1,659.02 from the unclaimed dividends paid into the court in the underlying Chapter 13 case. The case commenced on December 7, 2009, and a discharge was entered on January 6, 2014. On April 25, 2013, the Chapter 13 Trustee filed with the court a Notice of Unclaimed Dividend(s) by Creditor(s) indicating that the sum of \$1,659.02 was paid into the court as unclaimed funds, which should have otherwise gone to Citibank (West) FSB. Dkt. 48.

On September 10, 2024, Movant filed the instant motion, accompanied inter alia by documents that purport to be (1) a notarized Application for Payment of Unclaimed Funds; (2) photocopies of a driver's license, ID card, and business card confirming the identity of Angelo Valletta, who is a vice president of Movant; (3) a Request for Payee Information and TIN Certification form, and (4) a Form W-9. Dkt. 81.

The court is satisfied that Movant has demonstrated its entitlement to the unclaimed funds properly owed to Citibank (West) FSB. Accordingly, the motion is granted.

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

The court will issue an order.

8. [24-90417](#)-B-13 JAYME PUTHOFF CONTINUED OBJECTION TO
[LGT](#)-1 Matthew G. Grech CONFIRMATION OF PLAN BY LILIAN
G. TSANG
9-9-24 [[17](#)]

Final Ruling

This matter was continued from October 8, 2024, to allow any party in interest to file a response by 5:00 p.m. Friday, October 11, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 20, sustaining the objection, shall become the court's final decision. The continued hearing on October 15, 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.

9. [09-92529](#)-B-13 MICHAEL/JILL PARRISH
Ann Marie Friend

CONTINUED MOTION FOR PAYMENT OF
UNCLAIMED FUNDS IN THE AMOUNT
OF \$ 2386.37 WITH CITIBANK N.A.
9-10-24 [[77](#)]

CASE CLOSED: 06/22/15

Final Ruling

This matter was continued from October 8, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, October 11, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 20, granting the motion for payment of unclaimed funds, shall become the court's final decision. The continued hearing on October 15, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.

10. [24-90285](#)-B-13 JOHNATHAN MOHR CONTINUED OBJECTION TO
[LGT](#)-1 David C. Johnston CONFIRMATION OF PLAN BY LILIAN
G. TSANG
7-19-24 [[23](#)]

Final Ruling

This matter was continued from October 8, 2024, to allow any party in interest to file a response by 5:00 p.m. Friday, October 11, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 20, sustaining the objection, shall become the court's final decision. The continued hearing on October 15, 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.