

**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 18, 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 18, 2022 at 1:00 p.m.

1. [21-23220](#)-B-13 HARDEEP SINGH MOTION TO CONFIRM PLAN
 [DCJ](#)-2 David C. Johnston 9-2-22 [[58](#)]

Final Ruling

CONTINUED TO 11/22/22 AT 1:00 P.M.

This matter was continued to November 22, 2022, at 1:00 p.m. per an order entered September 29, 2022.

October 18, 2022 at 1:00 p.m.

2. [22-21126](#)-B-13 DOUGLAS/NYLA STONE
[CRG](#)-3 Carl R. Gustafson

MOTION TO CONFIRM PLAN
9-9-22 [[56](#)]

Final Ruling

No appearance at the October 18, 2022, hearing is required. The confirmation hearing is continued to November 1, 2022, at 1:00 p.m. pending final disposition of appeal following limited remand by the Ninth Circuit Bankruptcy Appellate Panel to enter order on the indicative ruling.

The court will issue an order.

3. [22-21028](#)-B-13 DORIAN/CATHERINE ANNE MOTION TO MODIFY PLAN
[MRL](#)-1 COLBERT 8-22-22 [[24](#)]
Mikalah R. 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 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 value the secured claim of Unifund CCR Partners at \$0.00 and continue the matter to October 25, 2022, at 1:00 p.m.**

Debtor moves to value the secured claim of Unifund CCR Partners ("Creditor") pursuant to 11 U.S.C. § 506(a). Debtor is the owner of the subject real property commonly known as 2218 N. Flibert, Stockton, California ("Property"). Debtor seeks to value the Property at a fair market value of \$70,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately \$77,177.00. The second deed of trust secures a claim with a balance of approximately \$136,040.00. Creditor's judgment lien secures a claim with a balance of approximately \$10,045.90. Therefore, Creditor's claim secured by a judgment lien is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

Noteworthy is that, by Debtor filing a motion to value collateral, Creditor's judgment lien remains as an unsecured claim in this bankruptcy. A debtor who seeks to avoid a judicial lien in a Chapter 13 bankruptcy must file an adversary proceeding. Fed. R. Bankr. P. 7001(2). A creditor's lien is not void on the basis of whether it is secured under § 506(a), but on the basis of whether the underlying claim is allowed or disallowed. 4 COLLIER ON BANKRUPTCY 506.06[1][a] (Alan N. Resnick & Henry J. Sommer eds., 16th Ed.). See *Dewsnup v. Timm*, 502 U.S. 410, 417-18 (1992). The Creditor's lien remains of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The request for additional language in the order granting is denied.

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, October 21, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R.

October 18, 2022 at 1:00 p.m.

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 October 25, 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 October 25, 2022, at 1:00 p.m.

5. [17-23068](#)-B-13 SILVIA QUIROGA
[RJ-6](#) Richard L. Jare

MOTION TO MODIFY PLAN
9-1-22 [[105](#)]

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 Debtor has 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 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 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 Nonstandard Provisions of the plan are unclear and contradictory. The plan payments are \$1,395.00 for May 2021 through February 2022, then \$1,850.00 for March 2022 through February 2026, but they are also to be suspended through September 2022 with a new dividend beginning October 2022. The plan is not feasible under 11 U.S.C. § 1325(a)(6).

Second, based on the Chapter 13 Trustee's calculations, plan payments will need to be at least \$2,075.00 beginning September 2022 in order for the Debtor's plan to be feasible as paying unsecured creditors 16.34%.

Third, the plan does not provide for post-petition arrears totaling \$2,759.13 to Class 1 creditor SN Servicing Corp.

Fourth, as of September 2022, the balance owed to SN Servicing Corp. for pre-petition arrears is \$32,812.94. The proposed monthly dividend of \$612.25 will take 53 months to pay this claim in full. The dividend is not sufficient to satisfy the claim of this creditor.

Fifth, the motion and declarations are silent as to why the Debtors are delinquent in the amount of \$7,473.00 under the currently confirmed plan and why these funds were not paid. Without knowing the reasons for the delinquency, it is unclear if what caused the delinquency has been rectified and whether Debtors 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.

7. [20-21794](#)-B-13 GREGORY/JANEE MOORE
[TBK](#)-6 Taras Kurta
Thru #8

MOTION TO INCUR DEBT
9-13-22 [[93](#)]

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 incur debt.

The motion seeks permission to purchase a 2019 Buick Encore ("Vehicle"), the total purchase price of which is \$22,556.00, with a monthly payment of \$474.77 at an interest rate of 9.45%. The Vehicle will replace a surrendered 2014 Dodge Journey van. Debtors have only one other commute vehicle but state that they each need a reliable commuter vehicle to get to their respective jobs.

Debtors filed a modified plan, TBK-7, and amended schedules to reflect the new monthly payment toward the Vehicle.

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 granted.

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

The court will issue an order.

8. [20-21794](#)-B-13 GREGORY/JANEE MOORE
[TBK](#)-7 Taras Kurta

MOTION TO MODIFY PLAN
9-13-22 [[96](#)]

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.