

**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: November 21, 2023

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.

November 21, 2023 at 1:00 p.m.
Page 1 of 13

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.

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, all sums required by the plan have not been paid, 11 U.S.C. § 1325(a)(2). Debtor's plan fails to properly suspend the plan payment delinquency. Debtor is delinquent \$4,100.00 under the proposed plan.

Second, Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtor's plan fails to provide for post-petition arrears totaling \$2,738.62 to Class 1 creditor Rushmore Loan Management Services representing the month of August 2023. Without providing for these post-petition arrears, it cannot be determined whether the Debtor's plan is feasible.

Third, Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 2.01 of Debtor's plan proposes a monthly payment of \$0.00 for 3 months and \$5,600.00 for 57 months. Debtor has failed to provide admissible evidence that the plan is mathematically feasible. Trustee's calculations indicate that Debtor's average plan payment will need to be at least \$5,675.00 beginning November 2023 in order for Debtor's plan to be feasible as paying unsecured creditors 100.00% plus interest at the rate of 1% per annum as stated in the additional provisions 7.01

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. [22-22612](#)-B-13 LAWRENCE/JENNY BOLDON MOTION TO CONFIRM PLAN
[BSH](#)-7 Brian S. Haddix 9-1-23 [[106](#)]
Thru #4

Final Ruling

The motion 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.

An amended plan was filed on November 3, 2023. The confirmation hearing for the amended plan is scheduled for December 12, 2023. The earlier plan filed September 1, 2023, is not confirmed.

The motion is ORDERED DENIED AS MOOT for reasons stated in the minutes.

The court will issue an order.

4. [22-22612](#)-B-13 LAWRENCE/JENNY BOLDON OBJECTION TO CONFIRMATION OF
[KMM](#)-2 Brian S. Haddix PLAN BY HARLEY-DAVIDSON CREDIT
CORPORATION
9-21-23 [[115](#)]

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). Nonetheless, 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 overrule the objection as moot.

Subsequent to the filing of Harley-Davidson Credit Corporation's objection, the Debtors filed an amended plan on November 3, 2023. The confirmation hearing for the amended plan is scheduled for December 12, 2023. The earlier plan filed September 1, 2023, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

5. [23-22530](#)-B-13 SHA SHAVONDILA PIERSON CONTINUED OBJECTION TO
[LGT](#)-1 Pro Se CONFIRMATION OF PLAN BY LILIAN
G. TSANG
9-27-23 [[24](#)]

CONTINUED TO 12/5/23 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS HELD 11/29/23.

Final Ruling

No appearance at the November 21, 2023, hearing is required. 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 grant the motion to impose automatic stay and continue the matter to November 28, 2023, at 1:00 p.m.**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed in this case. This is the Debtor's third bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy case was dismissed on November 1, 2022, after pro se Debtor had failed to timely file documents (case no. 22-22615, dkt. 9). The Debtor's second bankruptcy case was dismissed on September 13, 2023, due to Debtor's delinquency in plan payments and failure to file, set, and serve an amended plan (case no. 22-23005, dkt. 86, 89).

Discussion

Section 362(c)(4)(A) provides that if a case is filed by an individual debtor, and if two or more cases of the debtor were pending within the previous year but were dismissed, other than a case refiled after dismissal of a case under § 707(b), the automatic stay does not go into effect upon the filing of the new case. However, § 362(c)(4)(B) provides that on request made within 30 days after the filing of the new case, the court may order the stay to take effect if the moving party demonstrates that the filing of the new case is in good faith as to the creditors to be stayed.

The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

Debtor states that there have been substantial changes in his financial and personal affairs since the prior cases were filed. Debtor is now able to resume working as a contractor after he had been off work for several months due to being diagnosed with and having surgery for prostate cancer. This caused him to fall behind on plan payments. Debtor has filed the current bankruptcy to keep his car and pay taxes, and he intends to surrender his real property. Debtor contends that with these changes in finances and personal affairs will result in a successful bankruptcy.

The Debtor has offered sufficient explanation from which the court can conclude that his financial or personal circumstances have substantially changed, and that the present case will be concluded with a confirmed plan that will be fully performed. The Debtor has shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D).

The motion is conditionally granted and the automatic stay is imposed for all purposes and parties.

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, November 24, 2023, 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 November 28, 2023, 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 November 28, 2023, at 1:00 p.m.

The court will issue an order.

7. [23-23346](#)-B-13 JOSHUA/CELINA LANE
[RAS](#)-1 Eric J. Gravel

OBJECTION TO CONFIRMATION OF
PLAN BY USAA FEDERAL SAVINGS
BANK
10-18-23 [[13](#)]

Final Ruling

The *initial* Chapter 13 Plan filed September 26, 2023, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to November 28, 2023, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

USAA Federal Savings Bank ("Creditor") holds a security interest as to property described as a 2018 BMW 5-series Sedan 530i ("Vehicle"). Debtors' plan provides for Creditor's claim to be paid in full through the plan at an interest rate of 4.59%. Creditor filed its Proof of Claim 3-1 on October 10, 2023.

Creditor objects to the interest rate provided for in the proposed plan and instead states that an interest rate of 4.84% is appropriate as noted in its proof of claim. This is less than the current prime rate of 8.50%, which the court takes judicial notice of as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., November 18, 2023, http://online.wsj.com/mdc/public/page/mdc_bonds.html. The court finds Creditor's interest rate of 4.84% to be appropriate.

The plan filed September 26, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), party in interest shall have until 5:00 p.m. on November 24, 2023, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtors, the Debtors' attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained 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 November 28, 2023, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on November 28, 2023, at 1:00 p.m.

The court will issue an order.

8. [18-20247](#)-B-13 BRIDGET DIAZ
[LGT](#)-1 Grace S. Johnson

OBJECTION TO CLAIM OF U.S.
DEPARTMENT OF EDUCATION, CLAIM
NUMBER 10
10-12-23 [[92](#)]

Final Ruling

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, 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 sustain the objection to Claim Nos. 10-1, 10-2, and 10-3 of the U.S. Department of Education and continue the matter to November 28, 2023, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claims of the U.S. Department of Education ("Creditor"), Claim Nos. 10-1, 10-2, and 10-3. The claim is asserted to be unsecured in the amount of \$107,508.21. The Trustee asserts that this is a duplicate of Claim No. 8-1. The Trustee's office sent a notice of duplicate claim letter to Creditor on April 18, 2018. Creditor amended the duplicate claim to a claim amount of \$0.00 (Claim No. 10-2), which rectified the issue. However, seven months after, Creditor filed Claim No. 10-3 once again and listed a fully unsecured claim amount of \$107,508.21. The Trustee's office sent notices of the duplicate claim to Creditor, with no response.

Debtor's plan had a term of 60 months and Debtor made her final plan payment on May 4, 2023. The Trustee's office emailed Debtor's attorney for assistance to resolve the Creditor's duplicate claims but has not received a response. Trustee cannot make final disbursements or begin the closing process until the duplicate claims are disallowed.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the Trustee has satisfied its burden of overcoming the presumptive validity of the claim. Based on the evidence before the court, the Creditor's Claim Nos. 10-1, 10-2, and 10-3 are disallowed in their entirety as duplicate claims. The objection to the proof of claim is sustained.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, November 24, 2023, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the objection will be deemed

sustained 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 November 28, 2023, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on November 28, 2023, at 1:00 p.m.

The court will issue an order.

Final Ruling

The *initial* Chapter 13 Plan filed August 31, 2023, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to November 28, 2023, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Paragraph 2.01 of Debtors' plan provides for a monthly plan payment of \$250.00. The Debtors have failed to provide admissible evidence that this plan is mathematically feasible. Calculations indicate that Debtors' plan payment will need to be at least \$810.00 per month for the plan term of 60 months in order for Debtors' plan to be feasible.

Second, Section 3.08 of Debtors' plan provides for Bridgecrest (Carvana) for a 2018 Chevrolet Equinox and Onemain for a 2009 GMC Acadia as Class 2 claims. Schedule J at #17a and #17b lists monthly car payments of \$609.00 and \$325.00 as being paid directly by the Debtors. Without clarification, it cannot be determined if Debtors' plan is feasible or pays all income into the plan.

Third, the projected disposable income available to be applied to make payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B) is \$213.95 for 60 months, which would result in an 8.82% dividend to the general unsecured creditors. However, Debtors' plan provides for 1% distribution to Debtors' general unsecured creditors. Therefore, Debtors' plan fails to comply with 11 U.S.C. § 1325(b)(1)(B) and may not be confirmed.

Fourth, Debtors' plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtors' Schedule I lists a 401K loan repayment in the amount of \$166.64 per month that will complete within the Debtors' 60-month plan term. Debtors' plan payment does not increase accordingly. Debtors' Statement of Financial Affairs at #4 fails to accurately list income for Co-Debtor.

Fifth, Debtors' Schedule I fails to list the correct employers addresses for both Debtor and Co-Debtor.

Sixth, Debtors' Schedule J includes a support obligation of \$756.25 per month. Debtors have failed to provide the Trustee with a Domestic Support Obligation checklist.

The plan filed August 31, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), party in interest shall have until 5:00 p.m. on November 24, 2023, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtors, the Debtors' attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained 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 November 28, 2023, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on November 28, 2023, at 1:00 p.m.

The court will issue an order.

10. [23-22890](#)-B-13 CARIDA/GROVER JOHNSON
[SKI](#)-1 Natali A. Ron

OBJECTION TO CONFIRMATION OF
PLAN BY TD BANK, N.A.
9-25-23 [[19](#)]

WITHDRAWN BY M.P.

Final Ruling

TD Bank, N.A. having filed a notice of withdrawal of its objection, the objection 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.

There being no other objection to confirmation, the plan filed August 24, 2023, will be confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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.