

**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 22, 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

November 22, 2022 at 1:00 p.m.

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

Final Ruling

No appearance at the November 22, 2022, hearing is necessary. An order was entered on November 10, 2022, granting the stipulation to continue the confirmation hearing to January 17, 2023, at 1:00 p.m. See dkt. 72.

The court will issue an order.

November 22, 2022 at 1:00 p.m.

2. [13-27931](#)-B-13 BLANCA CANO
[BSH](#)-5 Brian S. Haddix

MOTION TO AVOID LIEN OF UNIFUND
CCR PARTNERS
11-2-22 [[83](#)]

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 and continue the matter to November 29, 2022, at 1:00 p.m.**

This is a request for an order avoiding the judicial lien of Unifund CCR Partners ("Creditor") against the Debtor's property commonly known as 2218 N. Filbert, Stockton, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$10,045.90. An abstract of judgment was recorded with San Joaquin County on November 11, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$70,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C. All other liens recorded against the Property total \$213,217.00.

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 Debtor's 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, November 25, 2022, 2022, 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 29, 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 November 29, 2022, at 1:00 p.m.

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 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 confirm the plan.

First, Debtors and their attorney have failed to file a Statement of Rights and Responsibilities. As such, the payments of attorney fees cannot be made pursuant to Local Bankruptcy Rule 2016-1(C) or Debtors' plan.

Second, based on Debtors' schedules, there are nonexempt assets of \$6,795.00 available for distribution to Debtors' general unsecured creditors. In order to meet the liquidation test of 11 U.S.C. § 1325(a)(4), Debtors' plan must pay 6.25% (\$6,795.00 divided by general unsecured claims totaling \$108,674.58) to Debtors' general unsecured creditors. Debtors' plan pays 0% and therefore it fails the liquidation test.

Third, Debtors have failed to file an Official Form 122C-1 Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period. It cannot be determined whether the plan provides that all of Debtors' projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Fourth, Debtors plan is not feasible because it does not list the claim of Freedom Mortgage, the plan relies on a yet-to-be-filed motion to value collateral of Mechanics Bank, Debtors attempt to cram down the collateral of BMW Bank despite the fact that the debt was not incurred at least 910 days prior to the Debtors' bankruptcy filing, Schedule I does not accurately reflect Debtors' wages, and the proposed plan payment of \$605.00 per month is not feasible given that Debtors' schedules showing a monthly net income of only \$130.90 per month.

Fifth, the best efforts of the Debtors is in question. Debtors' schedules includes inappropriate deductions for an non-dependant daughter's college tuition and rent, a deduction for a student loan, deductions for two vehicle payments as expenses even though auto debts are already included in the plan, and a deduction for required repayment of retirement loan funds even though the plan does not provide for increased plan payments once the loan is paid in full.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

The court will issue an order.

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

MOTION TO MODIFY PLAN
9-26-22 [[76](#)]

WITHDRAWN BY M.P.

Final Ruling

The Debtors having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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

The court will issue an order.

5. [22-22273](#)-B-13 CHRISTOPHER SAMUELS
[KMM](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY ADJUSTABLE RATE
MORTGAGE TRUST 2005-3,
ADJUSTABLE RATE MORTGAGE-BACKED
PASS-THROUGH CERTIFICATES,
SERIES 2005-3, U.S. BANK
NATIONAL ASSOCIATION
10-11-22 [[17](#)]

CASE DISMISSED: 10/23/2022

Final Ruling

The case was dismissed on October 23, 2022. The objection to confirmation of plan is overruled as moot.

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

The court will issue an order.

6. [18-22949](#)-B-13 GEORGE MOSQUEDA
[KMB](#)-4 G. Michael Williams

CONTINUED MOTION TO APPROVE
LOAN MODIFICATION
10-28-22 [[57](#)]

Final Ruling

This matter was continued from November 15, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, November 18, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 62, granting the motion to approve loan modification, shall become the court's final decision. The continued hearing on November 22, 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.