

**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: December 8, 2020

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

December 8, 2020 at 1:00 p.m.

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1. [12-91523](#)-B-13 RICK/DAWNA HAUSELMANN MOTION TO AVOID LIEN OF
[DCJ](#)-10 David C. Johnston WILDENRADT MC MURRAY, INC.
Thru #5 11-24-20 [[126](#)]

Final Ruling

The motion has been set for hearing on less than 28-days' notice. Local Bankruptcy Rule 9014-1(f)(2). Due to court closures related to COVID-19, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to grant the motion to avoid lien.

This is a request for an order avoiding the judicial lien of Wildenradt Mc Murray, Inc. ("Creditor") against the Debtors' property commonly known as 10412 Fox Borough Court, Oakdale, California ("Property").

A judgment was entered against Debtor Rick Hauselmann individually in favor of Creditor in the amount of \$99,526.09. An abstract of judgment was recorded with Stanislaus County on July 6, 2011, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of \$440,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000.00 on Schedule C.

The Debtors' exemption (\$100,000) and the unavoidable first deed of trust against the Property (\$347,000) total \$447,000. Because the value of Debtor's Property is less than the exemption and unavoidable lien, Creditor's lien is fully avoidable.

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 Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will issue an order.

December 8, 2020 at 1:00 p.m.

2. [12-91523](#)-B-13 RICK/DAWNA HAUSELMANN
[DCJ](#)-6 David C. Johnston

MOTION TO AVOID LIEN OF CHERYL
HAUSELMANN AKA CHERYL DILLWOOD
11-24-20 [[106](#)]

Final Ruling

The motion has been set for hearing on less than 28-days' notice. Local Bankruptcy Rule 9014-1(f)(2). Due to court closures related to COVID-19, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to continue the matter to **January 5, 2021, at 1:00 p.m.**

This is a request for an order avoiding two judicial liens of Cheryl Hauselmann aka Cheryl Dillwood ("Creditor") against the Debtors' property commonly known as 10412 Fox Borough Court, Oakdale, California ("Property").

A judgment was entered against Debtor Rick Hauselmann individually in favor of Creditor in the amounts of \$247,293.67, recorded with Stanislaus County on October 6, 2009, and \$6,600.00, recorded with Stanislaus County on August 8, 2018. The liens encumber the Property.

Creditor has filed an opposition stating that the 2009 lien was a voluntary lien and cannot be avoided, and that the 2018 lien is a post-petition lien that arose out of a post-petition claim and cannot be avoided. The Creditor requests that the hearing be continued to provide it with additional time to file evidence and briefs.

Since the matter was set on less than 28-days' notice and opposition was filed, this matter shall be continued to January 5, 2021, at 1:00 p.m.

Creditor (or any other party in interest) may file and serve a supplemental opposition by December 18, 2020. Debtors may file and serve a reply by December 28, 2020.

The court will issue an order.

3. [12-91523](#)-B-13 RICK/DAWNA HAUSELMANN
[DCJ](#)-7 David C. Johnston

MOTION TO AVOID LIEN OF JUDITH
BELL ENDSLEY
11-24-20 [[111](#)]

Final Ruling

The motion has been set for hearing on less than 28-days' notice. Local Bankruptcy Rule 9014-1(f)(2). Due to court closures related to COVID-19, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to grant the motion to avoid lien.

This is a request for an order avoiding the judicial lien of Judith Bell Endsley ("Creditor") against the Debtors' property commonly known as 10412 Fox Borough Court, Oakdale, California ("Property").

A judgment was entered against Debtor Rick Hauselmann individually in favor of Creditor in the amount of \$3,240.00. An abstract of judgment was recorded with Stanislaus County on August 12, 2009, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of \$440,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000.00 on Schedule C.

The Debtors' exemption (\$100,000) and the unavoidable first deed of trust against the Property (\$347,000) total \$447,000. Because the value of Debtor's Property is less than the exemption and unavoidable lien, Creditor's lien is fully avoidable.

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 Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will issue an order.

4. [12-91523](#)-B-13 RICK/DAWNA HAUSELMANN MOTION TO AVOID LIEN OF JP
[DCJ](#)-8 David C. Johnston MORGAN CHASE BANK, N.A.
11-24-20 [[116](#)]

Final Ruling

The motion has been set for hearing on less than 28-days' notice. Local Bankruptcy Rule 9014-1(f)(2). Due to court closures related to COVID-19, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to grant the motion to avoid lien.

This is a request for an order avoiding the judicial lien of JP Morgan Chase Bank, N.A. ("Creditor") against the Debtors' property commonly known as 10412 Fox Borough Court, Oakdale, California ("Property").

A judgment was entered against Debtor Rick Hauselmann individually in favor of Creditor in the amount of \$51,062.25. An abstract of judgment was recorded with Stanislaus County on September 24, 2010, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of \$440,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000.00 on Schedule C.

The Debtors' exemption (\$100,000) and the unavoidable first deed of trust against the Property (\$347,000) total \$447,000. Because the value of Debtor's Property is less than the exemption and unavoidable lien, Creditor's lien is fully avoidable.

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 Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will issue an order.

5. [12-91523](#)-B-13 RICK/DAWNA HAUSELMANN MOTION TO AVOID LIEN OF
[DCJ](#)-9 David C. Johnston NATIONAL WOOD PRODUCTS, INC.
11-24-20 [[121](#)]

Final Ruling

The motion has been set for hearing on less than 28-days' notice. Local Bankruptcy Rule 9014-1(f)(2). Due to court closures related to COVID-19, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to grant the motion to avoid lien.

This is a request for an order avoiding the judicial lien of National Wood Products, Inc. ("Creditor") against the Debtors' property commonly known as 10412 Fox Borough Court, Oakdale, California ("Property").

A judgment was entered against Debtor Rick Hauselmann individually in favor of Creditor in the amount of \$24,700.92. An abstract of judgment was recorded with Stanislaus County on September 1, 2011, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of \$440,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000.00 on Schedule C.

The Debtors' exemption (\$100,000) and the unavoidable first deed of trust against the Property (\$347,000) total \$447,000. Because the value of Debtor's Property is less than the exemption and unavoidable lien, Creditor's lien is fully avoidable.

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 Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will issue an order.

6. [20-90136](#)-B-13 ASHLEY BELDEN
[JCK](#)-1 Kathleen H. Crist

MOTION TO MODIFY PLAN
10-21-20 [[22](#)]

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.

7. [16-91038](#)-B-13 MARCOS/LUPE DE LA CRUZ MOTION TO MODIFY PLAN
[PLG-2](#) Rabin J. Pournazarian 11-3-20 [[52](#)]

Final Ruling

The motion 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 this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to permit the requested modification and confirm the modified plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that the Debtors have not filed supplemental Schedules I and/or J to support their proposed plan payment.

The Debtors filed a response stating that they have filed amended Schedules I and J, which evidence their ability to make the proposed plan payment. The amended schedules were filed on November 25, 2020, dkt. 61.

The modified 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/s 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.

8. [17-90564](#)-B-13 DANIEL/GERARDEE DONNAN CONTINUED MOTION TO APPROVE
[EGS](#)-5 Steven S. Altman LOAN MODIFICATION
Thru #9 10-11-20 [[266](#)]

Final Ruling

This matter was continued from November 10, 2020, to be heard in conjunction with Debtors' motion to modify plan. The Chapter 13 Trustee had filed an objection stating in part that the loan modification, which increases the Class 1 ongoing mortgage payment from \$1,262.66 to \$2,135.93 beginning June 1, 2020, requires the Debtors to file a motion to modify plan. The modified plan was filed on November 2, 2020, and is heard at Item #9, JAD-9, and is denied without prejudice.

Because the loan modification requires an increase in Class 1 ongoing mortgage payments and the modified plan that would have provided for that increase is denied, the motion to approve loan modification cannot be granted.

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

The court will issue an order.

9. [17-90564](#)-B-13 DANIEL/GERARDEE DONNAN MOTION TO MODIFY PLAN
[JAD](#)-9 Steven S. Altman 11-2-20 [[274](#)]

Final Ruling

The motion 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 this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, the Debtors' plan proposes to pay additional attorney's fees of \$3,100.00. However, no motion for compensation has been set for hearing.

Second, the Debtors' plan states that they have paid a total of \$62,405.00 into the plan through month 39 (October 2020). However, the Trustee's records show that the Debtors have paid a total amount of \$61,890.00.

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

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

The court will issue an order.

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant 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 sustain the objection to Claim No. 13-1 of Bank of the West and disallow the claim in its entirety.

The Chapter 13 Trustee requests that the court disallow the claim of Bank of the West ("Creditor"), Claim No. 13-1. The claim is asserted to be in the amount of \$15,102.45. The Trustee asserts that the claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was May 9, 2019. The Creditor's claim was filed June 21, 2020.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its

entirety as untimely. The objection to the proof of claim is sustained.
The objection is ORDERED SUSTAINED for reasons stated in the minutes.
The court will issue an order.

11. [19-90986](#)-B-13 NICHOLAS/LORENA JONES
[JAD](#)-1 Jessica A. Dorn

MOTION TO MODIFY PLAN
10-21-20 [[28](#)]

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.