

**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 12, 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.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

December 12, 2023 at 1:00 p.m.

1. [23-90517](#)-B-13 RICKY DEL PONTE MOTION TO VALUE COLLATERAL OF
[BSH](#)-2 Brian S. Haddix MERRICK BANK
11-10-23 [[19](#)]

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 value the secured claim of Merrick Bank at \$33,000.00.

Debtor moves to value the secured claim of Merrick Bank ("Creditor"). Debtor is the owner of a 2021 Alumicraft 195 Sport fishing boat with motor and trailer (collectively "Personal Property"). The Personal Property is not a motor vehicle as defined in the National Traffic and Motor Vehicle Safety Act of 1966. As such, the Personal Property is not subject to the "hanging paragraph." The Debtor seeks to value the Personal Property at a replacement value of \$33,000.00 as of the petition filing date. As the owner, Debtor's 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).

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

In the Chapter 13 context, the replacement value of personal property used by a debtor 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 limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. See 11 U.S.C. § 1325(a).

The total dollar amount of the obligation to Merrick Bank is approximately \$40,080.00 as stated in Schedule D. Debtor asserts that the price a retail merchant would charge for the Personal Property is \$33,000.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$33,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

December 12, 2023 at 1:00 p.m.

The court will issue an order.

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. 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.

3. [23-90326](#)-B-13 KRISTOPHER COOPER MOTION FOR RELIEF FROM
 [SSA](#)-2 Flor De Maria A. Tataje AUTOMATIC STAY AND/OR MOTION
 FOR ADEQUATE PROTECTION
ROLLING F CREDIT UNION VS. 11-15-23 [[82](#)]

Final Ruling

The case having been dismissed on December 5, 2023, the motion for relief from automatic stay is denied as moot.

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

The court will issue an order.

4. [22-90429](#)-B-13 MARY LYNN LEBOW
[23-9016](#) CAE-1
BRECKENRIDGE PROPERTY FUND
2016, LLC V. LEBOW ET AL
Thru #5

CONTINUED STATUS CONFERENCE RE:
NOTICE OF REMOVAL
9-13-23 [[1](#)]

Final Ruling

The status conference is continued to February 13, 2024, at 11:00 a.m. No appearance on December 12, 2023, at 1:00 p.m. is required.

The court will issue an order.

5. [22-90429](#)-B-13 MARY LYNN LEBOW
[23-9016](#) SC-2
BRECKENRIDGE PROPERTY FUND
2016, LLC V. LEBOW ET AL

MOTION FOR REMAND
11-13-23 [[10](#)]

Final Ruling

Plaintiff Breckenridge Property Fund 2016, LLC, failed to use the Official Certificate of Service Form required by Local Bankr. R. 7005-1. This form is mandatory for attorneys as of November 1, 2022.

The *Notice of Motion to Remand Matter to State Court* also fails to comply with Local Bankr. R. 9014-1(d) (3) (B).

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

The court will issue an order.

6. [22-90353](#)-B-13 KELLY SEARS
[DCJ](#)-3 David C. Johnston

MOTION TO CONFIRM PLAN
11-2-23 [[106](#)]

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 third amended plan.

First, the Debtor is \$750.00 delinquent in plan payments. The next scheduled payment of \$250.00 is due on November 25, 2023. The last payment in the amount of \$250.00 was posted to debtor's account on November 10, 2023. The last payment prior to that date was posted on July 21, 2023, in the amount of \$250.00. It is unclear whether the Debtor will be able to make plan payments under the plan. 11 U.S.C. § 1325(a)(6).

Second, the Debtor has failed to submit requested financial documents or file amended schedules. The Debtor's plan has not been proposed in good faith. 11 U.S.C. § 1325(a)(3).

Third, the Debtor has failed to resolve issues raised by the Chapter 13 Trustee in its objection to Debtor's first amended plan and second amended plan. Specifically, the Debtor has not filed an amended Schedule I, business income and expenses, and year-to-date profit and loss statement for her business Appollo Pblow, Inc. dba Sandy Bottoms Tanning Salon.

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.

7. [20-90663](#)-B-13 JUAN DIAZ AND SUPINDER MOTION TO MODIFY PLAN
[BSH](#)-5 LIDHAR 11-6-23 [[99](#)]
Brian S. Haddix

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.

8. [21-90155](#)-B-13 GLENN/KATRINA MAROWSKI CONTINUED MOTION TO MODIFY PLAN
[MJD](#)-5 Matthew J. DeCaminada 10-31-23 [[75](#)]

Final Ruling

This matter was continued from December 5, 2023, to allow Debtors to file a supplemental declaration by 5:00 p.m. Friday, December 8, 2023. Debtors timely filed a supplemental declaration stating that their vehicle was purchased before their bankruptcy case was filed and not with retirement loan funds. Separately, Debtors state that the loan funds were used instead to pay their delinquent mortgage payments, which they fell behind on due to assisting their daughter with medical expenses and taking care of their grandchildren.

The court finds these reasons justifiable. This resolves the issues raised by the Chapter 13 Trustee. The plan filed October 31, 2023, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed

The court's conditional ruling at dkt. 86 and the continued hearing on December 12, 2023, at 1:00 p.m. are vacated.

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.