

**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 13, 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
Modesto, California

December 13, 2022 at 1:00 p.m.

1. [17-90806](#)-B-13 KAY PARKER
[SSA](#)-2 Pro Se

MOTION TO EXPUNGE AND/OR MOTION
FOR COMPENSATION BY THE LAW
OFFICE OF BORTON PETRINI, LLP
FOR STEVEN S. ALTMAN, CREDITORS
ATTORNEY(S)
11-21-22 [[31](#)]

DEBTOR DISMISSED: 10/20/2017

Final Ruling

The motion is filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2). Inasmuch as debtor Kay Parker ("Debtor") is appearing pro se, the court finds there is good cause to continue the hearing and set a briefing schedule. See Local Bankr. R. 9014-1(f)(2)(C). Therefore,

(1) the hearing on the motion is continued to **January 10, 2023, at 1:00 p.m.**;

(2) any opposition or other response shall be filed and served by **December 27, 2022**; and

(3) any reply shall be filed and served by **January 3, 2023**.

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

The court will issue an order.

December 13, 2022 at 1:00 p.m.

2. [22-90350](#)-B-13 LARRY FOSTER
[JCW](#)-1 Pro Se
Thru #3

OBJECTION TO CONFIRMATION OF
PLAN BY FEDERAL HOME LOAN
MORTGAGE CORPORATION
11-18-22 [[35](#)]

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). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. 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 sustain the objection and deny confirmation of the plan for reasons stated at RDG-1.

The plan filed October 24, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

3. [22-90350](#)-B-13 LARRY FOSTER
[RDG](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
11-21-22 [[39](#)]

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). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. 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 sustain the objection and deny confirmation of the plan.

First, Debtor's plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtor's petition does not list his physical address. Although Debtor states in his response that his landlord does not provide a postal delivery address for the location that he is temporarily staying, no declaration has been filed by the landlord to support this.

Second, Debtor's plan is incomprehensible. The plan does not provide for a plan term. It cannot be determined whether the Debtor will be able to comply with the plan. 11 U.S.C. § 1325(a)(1).

Third, Debtor's plan fails the liquidation test. Debtor's schedules list non-exempt assets totaling \$18,800.00 and unsecured priority claims totaling \$0.00. Based on a review of Debtor's schedules, Debtor has non-priority general unsecured claims totaling \$243,390.00. Accordingly, in order to meet the liquidation test of 11 U.S.C. § 1325(a)(4), the plan must pay 8.02% to Debtor's general unsecured creditors. Debtor's plan provides for 0% dividend to general unsecured creditors and therefore fails the liquidation test.

The plan filed October 24, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

4. [22-90353](#)-B-13 KELLY SEARS OBJECTION TO CONFIRMATION OF
 [RDG](#)-1 David C. Johnston PLAN BY RUSSELL D. GREER
 11-21-22 [[18](#)]

CONTINUED TO 12/20/22 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 12/14/22.

Final Ruling

No appearance at the December 20, 2022, hearing is necessary. The court will issue an
order.

5. [22-90354](#)-B-13 VINCENT JONES OBJECTION TO CONFIRMATION OF
[JCW](#)-1 Peter G. Macaluso PLAN BY FORETHOUGHT LIFE
Thru #6 INSURANCE COMPANY
11-23-22 [[29](#)]

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). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. 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 sustain the objection and deny confirmation of the plan for reasons stated at RDG-1.

The plan filed October 11, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

6. [22-90354](#)-B-13 VINCENT JONES OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Peter G. Macaluso PLAN BY RUSSELL D. GREER
11-21-22 [[25](#)]

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). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. 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 sustain the objection and deny confirmation of the plan.

Debtor's plan fails to comply with 11 U.S.C. § 1322(b)(2), which provides that a plan may not modify the rights of a holder of a secured claim secured only by a security interest in real property that is the debtor's principal residence. Although Debtor states that he is not modifying the rights of Rushmore Loan Management, which holds a claim secured by the Debtor's principal residence, the Nonstandard Provisions at Section 7.02 of the plan proposes to pay Rushmore Loan Management only adequate protection payments rather than the contractual mortgage payments that are due to the lender.

Therefore, the plan filed October 11, 2022, does not comply with 11 U.S.C. §§ 1322 and

1325(a). The objection is sustained and the plan is not confirmed.
The objection is ORDERED SUSTAINED for reasons stated in the minutes.
The court will issue an order.

7. [22-90279](#)-B-13 DEBORAH KIRKLE MOTION TO CONFIRM PLAN
[DCJ](#)-1 David C. Johnston 10-26-22 [[19](#)]
Thru #8

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 first amended plan.

First, the plan impermissibly modifies the rights of U.S. Bank Trust National Association ("Creditor"), whose claim is secured only by a security interest in real property that is debtor's principal residence. The proposed Plan does not set forth a reasonable schedule and time period for the payment of the arrearages owed to Creditor. Instead of proposing to cure the arrears over the term of a 60-month plan, Debtor proposes to sell another property in six months and pay more than the claim at that time.

Second, the plan does not provide for regular or equal monthly payments to Creditor. Instead, Debtor proposes to pay the default in month six when another property is sold. This is contrary to 11 U.S.C. § 1325 (a) (5) (B) (iii) (I) and (II).

Third, the plan is not confirmable because it is speculative. Debtor may not premise the cure of Creditor's arrears on a speculative future event such as a sale.

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.

8. [22-90279](#)-B-13 DEBORAH KIRKLE MOTION FOR RELIEF FROM
[JCW](#)-1 David C. Johnston AUTOMATIC STAY AND/OR
CREDITOR U.S. BANK TRUST MOTION/APPLICATION FOR RELIEF
NATIONAL ASSOCIATION VS. FROM CO-DEBTOR STAY
11-14-22 [[27](#)]

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 deny the motion for relief from stay as unnecessary.

U.S. Bank Trust National Association ("Movant") seeks relief from the automatic stay

with respect to real property commonly known as 24150 & 24152 Highway 108, Twain Harte, California (the "Property").¹

Discussion

Relief from the automatic stay of 11 U.S.C. § 362(a) is not necessary because there is no automatic stay in place to terminate and terminating a terminated automatic stay would be an abuse of discretion. *Khabushani v. Anderson (In re Khabushani)*, 2021 WL 2562113, *2 (9th Cir. BAP June 22, 2021) (citations omitted).

The Debtor never filed – and so the court never timely heard – a motion to extend the automatic stay in this Chapter 13 case. See 11 U.S.C. § 362(c)(3)(B). Since the Debtor filed a prior Chapter 13 case on July 11, 2022, case no. 22-90230, that was dismissed on August 1, 2022, for failure to timely file documents that means the automatic stay of 11 U.S.C. § 362(a) terminated in its entirety 30 days after the August 16, 2022, petition date of this second Chapter 13 case. See 11 U.S.C. § 362(c)(3)(A); see also *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362, 367 (9th Cir. BAP 2011); accord *Parker v. Mid Valley Servcies (In re Parker)*, 2020 WL 710368, *1 n.2 (9th Cir. BAP Feb. 11, 2020); *Sepehry-Fard v. U.S. Bank, N.A. (as trustee)*, 2018 WL 2709718, *4 (9th Cir. BAP June 5, 2018).

There is no automatic stay in effect. See 11 U.S.C. § 362(j).

Attorneys' Fees Requested

Though requested in the motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this motion. Movant is not awarded any attorneys' fees.

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

The court will issue an order.

¹The motion also includes a single-sentence request for relief from the co-debtor stay of 11 U.S.C. § 1301 in the prayer for relief. However, the motion itself only mentions grounds for relief from the automatic stay of 11 U.S.C. § 362(a). For example: (1) the motion is captioned *Motion for Relief From Automatic Stay*; (2) the opening paragraph states that Creditor "moves this Court for an Order Terminating the Automatic Stay of 11 U.S.C. § 362 as to moving party (and the Trustee under the Deed of Trust securing moving party's claim)[;]"; (3) the analysis focuses on the automatic stay and cites specifically to 11 U.S.C. § 362(c)(3) and (d); and the conclusion states that "cause exists under 11 U.S.C. § 362(d)(1) and (d)(4) for relief from the automatic stay." The court therefore expresses no opinion as to the co-debtor stay, if any.

9. [21-90442](#)-B-13 THOMAS GILLIS
[RDG](#)-2 Pro Se

CONTINUED OBJECTION TO CLAIM OF
EMPLOYMENT DEVELOPMENT
DEPARTMENT, CLAIM NUMBER 4
11-2-22 [[93](#)]

Final Ruling

This matter was continued from December 6, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, December 9, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 97, sustaining the objection to claim, shall become the court's final decision. The continued hearing on December 13, 2022, at 1:00 p.m. is vacated.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.