

**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: December 14, 2021

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

December 14, 2021 at 1:00 p.m.

1. [15-23006](#)-B-13 CHERYL HULSEY MOTION TO AVOID LIEN OF CACH,
[PGM](#)-3 Peter G. Macaluso LLC
11-15-21 [[78](#)]

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 grant the motion to avoid lien.

This is a request for an order avoiding the judicial lien of CACH, LLC ("Creditor") against the Debtor's property commonly known as 1840 W. Lodi Avenue, Lodi, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$11,543.32. An abstract of judgment was recorded with San Joaquin County on October 10, 2014, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$205,000.00 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 \$25,000.00 on amended Schedule C filed November 15, 2021. The first deed of trust recorded against the Property totals \$222,995.87.

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).

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

The court will issue an order.

December 14, 2021 at 1:00 p.m.

2. [20-20322](#)-B-13 JEREMY/MELISSA MARTIN MOTION TO MODIFY PLAN
[JCK](#)-3 Gregory J. Smith 11-2-21 [[68](#)]

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.

3. [21-20824](#)-B-13 WILLIAM MARTINEZ
[MMJ](#)-1 Arasto Farsad

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-8-21 [[42](#)]

CAPITAL ONE AUTO FINANCE VS.

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 grant the motion for relief from automatic stay.

Capital One Auto Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Dodge Charger GT Sedan 4D (the "Vehicle"). The moving party has provided the Declaration of Cameron Dague to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Dague Declaration states that at the time of the filing of the motion there are 3 post-petition payments in default totaling \$1,249.08.

From the evidence provided to the court, and only for purposes of this motion, the total lien is \$24,037.58 as stated in the Dague Declaration. Movant asserts a private party value of \$26,769. See dkt. 45, exh. C. Debtor asserts a private party value of \$23,500 based on Schedule A/B. See dkt. 21. Both Movant and Debtor provided private party valuations and not the price a retail merchant would charge. In the Chapter 13 context, valuation of a vehicle 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).

Discussion

A debtor's persistent failure to make monthly payments may constitute adequate cause for relief from the stay. *Dangcil v. JP Morgan Chase Bank, N.A. (In re Dangcil)*, 2017 WL 1075045, *8 (9th Cir. BAP 2017) (internal quotations and citations omitted).

Moreover, regardless of whose valuation is accurate and given that the difference in price that a retail merchant would charge would be relatively nominal, under both Movant lacks adequate protection. Under Movant's valuation there is \$2,732.00 in equity, which translates to an equity cushion of 10.20% on a depreciating asset. Under the Debtor's valuation there is no equity and therefore no equity cushion.

Therefore, the court shall issue an order terminating and vacating the automatic stay to allow 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). The Chapter 13 Trustee ("Trustee") filed an opposition to the motion and objects to confirmation of the first modified plan. Secured Creditor Southern California Seconds ("Creditor") filed a joinder in the Trustee's opposition and objection. The Debtor filed a reply.

The court has reviewed the motion, opposition, joinder, reply, and all related documents. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1). Findings of fact and conclusions of law are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052, 9014(c).

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

Background

The Debtor filed this chapter 13 case on June 12, 2019. An order granting the motion to confirm the Debtor's first amended chapter 13 plan was filed on February 5, 2020. The order confirming the first amended chapter 13 plan was filed on March 10, 2020.

The first amended plan required the Debtor to pay the Trustee 24 payments of \$2,380.00 per month with a balloon payment of \$413,000.00 in 24 months (June 25, 2021). The Debtor has made 28 payments of \$2,380 each to date. The Debtor did not make the balloon payment of \$413,000.00, apparently, because Covid-19 complications prevented the sale of the real property from which the balloon payment was to be made.

To address the default, the Debtor filed a first modified plan, motion to confirm it, and related documents on October 27, 2021. According to the Debtor, the first modified plan is identical to the confirmed first amended plan except that it extends the maturity of the plan from 24 months to 36 months to permit a sale or refinance of the real property necessary to fund the first modified plan. It also adjusts the balloon payment from the original \$413,000.00 to \$417,000.00. The first amended plan, motion to confirm it, and related documents were also filed by an attorney different from the attorney who signed and filed the chapter 13 petition.

The Trustee and the Creditor raise two objections to confirmation of the first modified plan: (1) the first modified plan, motion to confirm it, and related documents were not filed by the Debtor's attorney of record; and (2) the proposed sale or refinance of property to fund the first modified plan is speculative, which means the first modified plan is not feasible.

Discussion

The court need not wade into the quagmire of who is, or who wants to be, the Debtor's attorney because, regardless of who the attorney of record is or may be, the first modified plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

The first modified plan is funded by a proposed sale or refinance of real property sometime during an additional 12 months after the subject property was not sold within the first 24 months under the first amended plan. Just as there was no sale or refinancing during the first 24 months, there is no evidence of a successful sale or refinance during the next 12 months. There is no sale pending and there is no evidence

that the Debtor has been approved (much less even applied) for refinancing.¹ Both events are therefore speculative which means the first modified plan is not feasible. *In re Werden*, 2000 WL 33679431 at *4 (Bankr. D. N.H. Feb. 8, 2000) ("Numerous courts have held that a Chapter 13 plan is not feasible when it envisions the sale or refinancing of significant property sometime in the future when such a sale or refinancing appears highly speculative."); *In re Colosi*, 2018 WL 2972342 at *6 (Bankr. D. N.J. June 8, 2018) ("In a situation where a debtor's ability to make payments under the proposed Chapter 13 plan relies on the refinancing of assets or the selling of properties, a court should deny confirmation when it considers the contingency too speculative.").

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

The court will issue an order.

¹Indeed, by his own admission, the Debtor has not even employed a real estate broker, found a buyer, or contacted government officials regarding potential development of the subject property. See dkt. 70 at 3:1-4.

5. [17-26647](#)-B-13 ESMERALDA GARCIA
[JCK](#)-7 Kathleen H. Crist

MOTION TO SELL
11-30-21 [[92](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). 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 sell and continue the matter to December 21, 2021, at 1:00 p.m.**

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 477 Debra Lee Court, Tracy, California ("Property").

Proposed purchaser Raymond Ng agreed to purchase the Property for \$575,000. When the Debtor filed her Chapter 13 Plan on December 2017, the proof of claim on the real property mortgage was \$ 125,043.76 with \$ 11,395.66 in pre-petition arrears. Subsequently, the Debtor has paid \$ 53,672.52 in on-going mortgage payments and \$11,395.66 in mortgage arrears. There is substantial equity available to the Debtor to payoff her Chapter 13 plan at 100% as the current estimated balance in her Chapter 13 is \$ 42,000. Debtor states that she will include the Chapter 13 Trustee's standard provisions in order to allow the Trustee to coordinate the closing of escrow.

Creditor U.S. Bank Trust National Association filed a conditional non-opposition to the motion to sell. Creditor consents to Debtor's proposed sale of the subject property, provided, that the Creditor is paid in full pursuant to a payoff quote provided by Creditor pursuant to 11 U.S.C. 363(f), or Creditor otherwise agrees in writing.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate. The motion to sell is conditionally granted.

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, December 17, 2021, 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 December 21, 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 December 21, at 1:00 p.m.

6. [21-23268](#)-B-13 RAUL JUAREZ
[RDG](#)-2 Charles L. Hastings

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-4-21 [[40](#)]

Final Ruling

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(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 sustain the objection and the exemption is disallowed in its entirety.

The Trustee objects to the Debtor's use of California Code of Civil Procedure § 704.070 to claim \$6,750.00 of unpaid wages exempt. The use of this code is improper since that code section is used to exempt paid earnings.

The Trustee's objection is sustained and the claimed exemption is disallowed.

The objection is ORDERED SUSTAINED and the claimed exemption DISALLOWED for reasons stated in the minutes.

The court will issue an order.

7. [21-22482](#)-B-13 GLENDA SHELBY
[JCK](#)-2 Gregory J. Smith

MOTION TO CONFIRM PLAN
11-3-21 [[41](#)]

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 second amended plan.

Creditor U.S. Bank National Association ("Creditor") objects to the proposed plan because it does not provide for equitable treatment of Creditor's secured claim. Creditor's holds a deed of trust secured by Debtor's residence, which matured on September 1, 2021. Under a 5-year amortization schedule of \$151,714.30 at 4.25% interest, Creditor states that it would be entitled to \$168,672. Under Debtor's proposed payment of \$1,360.00 for August 2021 then \$1,381.96 beginning September 2021, Creditor would only receive \$82,895.64 through the second amended plan. Thus, Debtor's proposed plan does not provide for equal monthly payments that is sufficient to pay the Creditor's claim in full. The plan does not satisfy the requirements of 11 U.S.C. § 1325(a)(5)(A).

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. [21-23493](#)-B-13 EMILIE/KENNETH BURTON
[RDG](#)-1 Richard L. Sturdevant

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
11-22-21 [[20](#)]

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 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 sustain the objection and deny confirmation of the plan.

Debtors' schedules list non-exempt assets totaling \$115,731.00 and unsecured priority claims totaling \$0. Accordingly, there are non-exempt assets available for distribution to Debtors' general unsecured creditors. Based on a review and analysis of Debtors' schedules, the Debtors have nonpriority general unsecured claims totaling \$567.00. Accordingly, in order to meet the liquidation test of 11 U.S.C. §1325(a)(4), Debtors' plan must pay 100% to general unsecured creditors, plus interest at the Federal Judgment Rate of 0.09%.

The plan filed October 19, 2021, 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.

9. [21-23068](#)-B-13 SAUL/MARIA CABRALES CONTINUED OBJECTION TO
[RDG](#)-1 Gregory J. Smith CONFIRMATION OF PLAN BY RUSSELL
Thru #11 D. GREER
10-14-21 [[26](#)]

Final Ruling

This matter was continued from December 7, 2021, since the parties filed an agreement to continue the matter to December 14, 2021, at 1:00 p.m., because the parties were preparing to file a settlement agreement, amended proof of claim, and an order confirming plan. No such documents have yet been filed.

The parties are ordered to file the aforementioned documents or a status report by 5:00 p.m. on December 17, 2021, and this matter will be **continued to December 21, 2021, at 1:00 p.m.**

The court will issue an order.

10. [21-23068](#)-B-13 SAUL/MARIA CABRALES CONTINUED OBJECTION TO
[APN](#)-1 Gregory J. Smith CONFIRMATION OF PLAN BY U.S.
BANK NATIONAL ASSOCIATION
10-12-21 [[19](#)]

Final Ruling

This matter was continued from December 7, 2021, since the parties filed an agreement to continue the matter to December 14, 2021, at 1:00 p.m., because the parties were preparing to file a settlement agreement, amended proof of claim, and an order confirming plan. No such documents have yet been filed.

The parties are ordered to file the aforementioned documents or a status report by 5:00 p.m. on December 17, 2021, and this matter will be **continued to December 21, 2021, at 1:00 p.m.**

The court will issue an order.

11. [21-23068](#)-B-13 SAUL/MARIA CABRALES CONTINUED OBJECTION TO CLAIM OF
[JCK](#)-1 Gregory J. Smith U.S. BANK NATIONAL ASSOCIATION,
CLAIM NUMBER 1
10-5-21 [[15](#)]

Final Ruling

This matter was continued from December 7, 2021, since the parties filed an agreement to continue the matter to December 14, 2021, at 1:00 p.m., because the parties were preparing to file a settlement agreement, amended proof of claim, and an order confirming plan. No such documents have yet been filed.

The parties are ordered to file the aforementioned documents or a status report by 5:00 p.m. on December 17, 2021, and this matter will be **continued to December 21, 2021, at 1:00 p.m.**

The court will issue an order.