

**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: September 1, 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
Sacramento, California

September 1, 2020 at 1:00 p.m.

1. [20-21419](#)-B-13 SHAHAR JONES MOTION TO CONFIRM PLAN
[PGM](#)-1 Peter G. Macaluso 7-24-20 [[24](#)]

DEBTOR DISMISSED: 7/30/20

Final Ruling

The case having been dismissed on July 20, 2020, the motion to confirm is denied as moot.

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

The court will issue an order.

2. [20-23025](#)-B-13 RAMON PADILLA
[RDG-1](#) Mark J. Hannon

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-30-20 [[20](#)]

Final Ruling

The Chapter 13 Trustee's objection to confirmation 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). The Debtor filed a non-opposition to the objection and states that he will file an amended plan.

The objection is therefore 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. [18-27726](#)-B-13 EDWARD COLOMA AND
[JBR-5](#) KATHERINE SANCHEZ
Jennifer B. Reichhoff

MOTION TO SELL O.S.T.
8-13-20 [[142](#)]

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, and may appear at the hearing to offer oral argument. However, due to COVID-19 court closure, 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 sell.

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. Debtors propose to sell the property described as 8672 Waterwell Way, Tracy, California ("Property").

Proposed purchaser has agreed to purchase the Property for \$1,350,000.00. Approximately \$551,544.69 will go to Meriwest Mortgage, the holder of the first deed of trust. Additionally, approximately \$46,845.20 will go to Meriwest Credit Union, the holder of the second deed of trust. The remainder will be disbursed to the Chapter 13 Trustee, estimated at \$465,102.89. Debtors will exempt \$100,000.00 pursuant to California Code of Civil Procedure § 704. Debtors state that the proceeds can be immediately retained by Chapter 13 Trustee Russell Greer ("Trustee") and disbursed to creditors. The fifth amended plan was confirmed on November 22, 2019. The Debtors are current with the terms and conditions of the plan. Debtors believe that the purchase price is the best that can be achieved for this kind of property, in its "as-is" condition, and in the current housing market.

Meriwest Credit Union, through its servicer Cenlar FSB, has filed a non-opposition to the motion to sell real property.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate.

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

The Trustee shall submit a standard form sale order approving the sale and which provides for the transfer, retention, and appropriate distribution of sale proceeds.

4. [20-20228](#)-B-13 DALJEET BRAR
[CLH](#)-4 Charles L. Hastings

MOTION TO CONFIRM PLAN
7-23-20 [[64](#)]

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.

5. [17-21330](#)-B-13 HOWARD/MARJORIE BINDER MOTION TO MODIFY PLAN
[HWW](#)-4 Hank W. Walth 7-15-20 [[80](#)]

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.

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, and may appear at the hearing to offer oral argument. However, due to COVID-19 court closure, 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 deny without prejudice the motion to avoid lien.

This is a request for an order avoiding the second deed of trust of Banco Popular North America ("Creditor") against the Debtors' property commonly known as 9123 Hereford Court, Stockton, California ("Property"). The subject junior lien was recorded in San Joaquin County and is identified as Official Document Number 2006-076338 and was executed on March 27, 2006, and later recorded on April 7, 2006. A true and correct copy of the assignment of this lien on January 31, 2008 (execution date), to Banco Popular North America via a formal Assignment of Deed of Trust is provided as an exhibit. Dkt. 64, exh. 1. The original Deed of Trust is also provided as an exhibit. Dkt. 64, exh. 2.

Debtors' motion to value collateral of Creditor at \$0.00 was granted on April 7, 2010. Dkt. 19. Since then, Debtors completed all plan payments and on October 15, 2013, received their official discharge decree. The case was closed on October 20, 2013. However, prior counsel to the Debtors did not file a motion to avoid Creditor's lien.

Discussion

A debtor who seeks to avoid a second deed of trust in a Chapter 13 bankruptcy must file an adversary proceeding. Fed. R. Bankr. P. 7001(2). A creditor's lien is not void on the basis of whether it is secured under § 506(a), but on the basis of whether the underlying claim is allowed or disallowed. 4 COLLIER ON BANKRUPTCY 506.06[1][a] (Alan N. Resnick & Henry J. Sommer eds., 16th Ed.). See *Dewsnup v. Timm*, 502 U.S. 410, 417-18 (1992). The Creditor's deed of trust remains of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the Creditor will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

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

The court will issue an order.

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 plan confirmation on two grounds. First, the priority claim of Franchise Tax Board, filed by Debtors' attorney, was untimely filed and should not receive any disbursements or can be provided for after all claims are paid since Debtors' plan proposes 100% to allowed nonpriority unsecured claims. Second, although Debtors' plan provides for post-petition arrears owed to Keypoint Credit Union and Wells Fargo Bank NA, Trustee's records show that there are no post-petition mortgage arrears that have been incurred.

Debtors filed a response stating that they agree with the Trustee's objections. In order to confirm the plan, Debtors agree to provide for the untimely-filed claim of Franchise Tax Board after all other claims are paid and to state that there are no post-petition arrears owed to Keypoint Credit Union and Wells Fargo Bank NA.

Provided that these changes are stated in the order confirming, 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.

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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. [20-22147](#)-B-13 ZARAH GARCIA MOTION TO CONFIRM PLAN
[JCK-2](#) Kathleen H. Crist 7-15-20 [[41](#)]
Thru #9

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 first 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.

9. [20-22147](#)-B-13 ZARAH GARCIA MOTION TO ALLOW ACQUISITION OF
[JCK-3](#) Kathleen H. Crist 2011 FREIGHTLINER
7-15-20 [[47](#)]

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 without prejudice the motion to allow acquisition of a 2011 Freightliner.

The motion seeks permission to purchase a 2011 Freightliner, in lieu of a prior lease, between Zarah Garcia ("Debtor") and Transport Direct ("Creditor"). Debtor, who is now a full-time employee trucker, seeks the flexibility of being an owner/operator going forward and the ability to increase her income. The parties agree to Creditor being paid \$352.00 for months July and August 2020, and thereafter being provided for in the plan as a Class 2 creditor with an amount claimed at \$18,666.00 and 5.00% interest. This is a slight deviation from the amounts listed in the first amended plan's Nonstandard Provisions, Section 7.04. See dkt. 45. Confirmation of the Debtor's first amended plan is heard at Item #8, JCK-2. Debtor contends that this agreement will not be detrimental to Class 7 claimants as the original Chapter 13 Plan listed a dividend of 0.00% for general unsecured creditors.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In*

re Gonzales, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

While the proposed agreement appears reasonable, Debtor has failed to provide a copy of the agreement to the court. Therefore, the motion is denied without prejudice.

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

The court will issue an order.

10. [20-22949](#)-B-13 ROBERT/PENELOPE CASH
[VVF-1](#) Jessica A. Dorn

OBJECTION TO CONFIRMATION OF
PLAN BY AMERICAN HONDA FINANCE
CORPORATION
7-13-20 [[18](#)]

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 a confirmation order, 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 overrule as moot the objection. Confirmation of the plan is nonetheless denied.

Feasibility of the plan depends on the Debtors filing a motion to value Creditor's collateral. The Debtors have filed, set, and served a motion to value collateral, which is scheduled to be heard on October 6, 2020, at 1:00 p.m. Also scheduled for that same hearing is a motion to confirm first amended plan.

Therefore, the objection is overruled as moot and the plan filed June 23, 2020, is not confirmed.

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

IT IS FURTHER ORDERED that confirmation of the plan is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

11. [19-26152](#)-B-13 OLIVO/NATIVIDAD
[JCK-2](#) CIENFUEGOS
Kathleen H. Crist

MOTION TO MODIFY PLAN
7-22-20 [[46](#)]

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 plan confirmation on grounds that the Trustee cannot administer payments in the month of September 2020 to both JPMorgan Chase Bank in the amount of \$417.92 for pre-petition arrears and JPMorgan Chase Bank in the amount of \$417.92 for attorney's fees (the total of which is \$1,253.76). The total monthly payments to secured creditors plus Trustee's fees and expenses total \$1,567.20 per month. Debtor's plan proposes only \$1,531.00 per month beginning July 2020.

Debtors filed a response stating that they waive payment of attorney's fees in order to pay JPMorgan Chase Bank's pre-petition arrears in September 2020. Debtors contend that this will allow their plan payment to remain at \$1,531.00 per month. Debtors further state that they are amenable to paying the remaining balance of attorney's fees over the span of the 60-month plan.

Provided that these issues are resolved in the order confirming, the modified plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a) and will be 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.

12. [20-23054](#)-B-13 MARK/HEATHER SEPULVEDA
[SSW-1](#) Mark S. Nelson

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-27-20 [[18](#)]

KEYBANK, N.A. VS.

Final Ruling

KeyBank N.A.'s motion for relief from stay as to a recreational vehicle 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). Debtors filed a non-opposition to the motion.

The motion is therefore granted. 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.

13. [20-20558](#)-B-13 KAREEM SYKES
[PGM](#)-2 Peter G. Macaluso

MOTION TO CONFIRM PLAN
7-24-20 [[74](#)]

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.

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 deny the motion to modify and not confirm the modified plan.

Debtor has **filed a second modified plan on July 22, 2020, that is identical to the first modified plan** filed on June 9, 2020, and **which was denied confirmation on July 21, 2020**. In other words, the Debtor is not seeking a to confirm a new modified plan. Problematic is that the Debtor fails to include any basis for confirmation of a plan that the court has already once declined to confirm.

Moreover, no attempt is made to provide any basis on which the court could examine the request under Fed. R. Civ. P. 59(e) applicable by Fed. R. Bankr. P. 9023. See *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (stating four grounds for relief). Debtor simply asks for "the Court's reassessment of her Chapter 13 Plan." Dkt. 68 at 1:24-25. Therefore, the motion to modify is denied and confirmation of the identical plan which the court previously declined to confirm on the Debtor's prior motion to modify is, again, denied. The Debtor is permitted to file a third modified plan different from the first/second modified plan.

Separately, creditor Wilmington Savings Fund Society, FSB, D/B/A Christina Trust as Trustee of the Residential Credit Opportunities Trust V, requests an award of fees and costs for having to oppose Debtor's motion to modify that was previously denied by the court. Creditor may file a separate motion seeking compensation for reasonable attorney's fees and expenses in connection with the filing of its objection.

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

The court will issue an order.

15. [18-21171](#)-B-13 EVERETT MARSHALL AND MOTION TO MODIFY PLAN
[HWW](#)-4 LYNETTE HASAN-MARSHALL 7-28-20 [[133](#)]
Hank W. Walth

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.

16. [20-22980](#)-B-13 PABLO/JISSELA SIBRIAN
[RDG-1](#) David S. Van Dyke

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D GREER
7-30-20 [[16](#)]

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.

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 overrule the objection and confirm the plan.

The Chapter 13 Trustee objects to confirmation on grounds that the Debtors do not have sufficient income to make the proposed plan payments based on their testimony at the meeting of creditors. Although Debtors did not file a response, they filed amended schedules on August 13, 2020, including Schedules I and J, showing that they can make the proposed plan payments for the applicable commitment period to general unsecured creditors.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed June 11, 2020, is confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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.

17. [19-24295](#)-B-13 STACY ESTANTINO
[RK-1](#) Richard Kwun

MOTION TO MODIFY PLAN
7-21-20 [[48](#)]

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.

18. [20-22995](#)-B-13 GILBERT/BLANCA LUIS OBJECTION TO CONFIRMATION OF
[JHK](#)-1 Peter G. Macaluso PLAN BY FORD MOTOR CREDIT
Thru #19 COMPANY LLC
7-29-20 [[41](#)]

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.

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 overrule the objection. However, the plan is not confirmed for reasons stated at Item #19, RDG-1.

Feasibility of the plan depends on the valuation of a 2017 Ford Explorer, which creditor Ford Motor Credit LLC holds a security interest. The parties entered into a stipulation as to valuation, which was granted by the court on July 27, 2020. See dkt. 40. Therefore, the creditor's objection is overruled.

Nonetheless, the plan filed June 12, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #19, RDG-1. The plan is not confirmed.

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

The court will issue an order.

19. [20-22995](#)-B-13 GILBERT/BLANCA LUIS OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Peter G. Macaluso PLAN BY RUSSELL D. GREER
7-30-20 [[46](#)]

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.

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 sustain the objection and deny confirmation of the plan.

First, the Debtors appeared at the continued meeting of creditors set for August 12, 2020, as required pursuant to 11 U.S.C. § 343.

Second, feasibility of the plan depends on the granting of a motion to value collateral of SafeAmerica Credit Union, which holds a security interest in a 2016 Ford F150. This motion was granted on August 4, 2020. Dkt. 51, PGM-1.

Third, in order for the plan to cash flow, the Debtors' monthly plan payment, which includes the Trustee's fees and expenses, must be increased from \$1,225.00 to \$1,331.11. This increase is due to the stipulated value of a 2017 Ford Explorer, which Ford Motor Credit LLC holds a security interest, that is higher than the amount provided for in Debtors' plan.

While the Debtors have filed a response stating that they can increase their plan payments to \$1,325.00 in the order confirming, the proposed order provides contradictory information. First, the proposed order lists the claim of Ford Motor Credit LLC in Class 4 rather than Class 2B as stipulated by the parties. See dkt. 40. Second, the Debtors list a third vehicle - a 2018 Ford Fusion Hybrid held by Ford Motor Credit LLC in Class 4 - that is not listed anywhere in Debtors' schedules or plan. Therefore, the proposed order does not resolve the pending issues but rather raises more questions.

The plan filed June 12, 2020, 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.

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.

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.