

**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: September 22, 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

September 22, 2020 at 1:00 p.m.

1. [20-90401](#)-B-13 ISAAC/CRISTINA QUEVEDO MOTION TO CONFIRM PLAN
 [MB-1](#) Michael Benavides 8-18-20 [[28](#)]

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 Debtors have 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 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.

2. [19-91006](#)-B-13 CASANDRA LYNNETTE COXUM MOTION FOR COMPENSATION BY THE
[BJS](#)-2 Bradley J. Swingle LAW OFFICE OF ARATA, SWINGLE,
VAN EGMOND & HEITLINGER FOR
BRADLEY J. SWINGLE, DEBTORS
ATTORNEY(S)
8-17-20 [[33](#)]

Final Ruling

The court has before it a *Motion for Approval of Attorneys' Fees* filed by attorney Bradley J. Swingle ("Applicant") as the substituted attorney for debtor Cassandra Glass-Coxum ("Debtor"). The motion is unopposed. However, the absence of an opposition does not necessarily mean that the motion will automatically be granted. *Rivas-Almendarez v. Holder*, 362 Fed.Appx. 606 (9th Cir. 2010). Even an unopposed motion must have merit and there must be a basis for the court to grant the relief requested. See generally, *In re Bassett*, 2019 WL 993302, *5 (Bankr. E.D. Cal. 2019). The court will therefore review the motion.

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 that 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).

Background

This is Applicant's renewed motion for compensation. The court denied Applicant's prior motion for compensation due to failure to file any task/time billing analysis or supporting evidence. See dkt. 30. Applicant again does not provide a breakdown of what time was spent on what services. Instead, as noted below, services provided and task time are grouped as totals by separate attorneys.

Former attorney Flor Tataje at Arata, Swingle, Van Egmond & Heitlinger ("Arata") apparently spent 4.1 hours reviewing the Debtor's petition, discussing her case, amending the petition, filing amended Schedule I, and preparing and sending an order to confirm the plan (no confirmation order has yet been entered in this case).

Attorney Bradley Swingle at Arata also apparently spent 3 hours preparing a second amended Rights and Responsibilities, communicating with the Chapter 13 Trustee's office, and preparing the present motion.

In total, the motion simply states that 7.1 hours were spent by attorneys at the Arata firm on Debtor's case at a rate of \$350.00 an hour, for a total value of \$2,485.00. Movant requests a flat rate of \$3,500 or \$2,485.00 in attorney's fees.

The motion cites 11 U.S.C. § 330(a) as the basis for the compensation requested. It also requests compensation for the actual, reasonable, and necessary services provided to the Debtor. The court therefore limits its analysis to Applicant's request for compensation under § 330(a). In other words, the request for a \$3,500.00 "no-look" flat fee under Local Bankr. R. 2016-1(c) will be denied with prejudice. And for the reasons explained below, the request for compensation under § 330(a) will be denied without prejudice.

Discussion

The fee applicant bears the burden of demonstrating that requested attorney's fees and costs are reasonable. *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); see also *In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted). That burden is not satisfied here.

Applicant again provides no detailed task/time records. The "records" that are

provided consist of a narrative of tasks and time generally spent resulting in tasks and time being "lumped."

Lumping, or block billing, is a timekeeping practice whereby multiple services are included in a single, aggregated time entry without any breakdown of the time spent on each activity. See *In re Dutta*, 175 B.R. 41, 46-47 (9th Cir. BAP 1994). Lumping prevents the court from conducting a reasonableness analysis. *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007). Lumping is universally disapproved by bankruptcy courts. *In re Recycling Indus., Inc.*, 243 B.R. 396, 406 (Bankr. D. Colo. 2000).

Because of Applicant's lumped billing narrative, the court is unable to conduct any sort of reasonableness analysis with respect to the time spent on a particular task in relation to the total attorney's fees requested. Applicant has therefore not satisfied the burden under § 330 of demonstrating that the attorney's fees requested are reasonable.

Conclusion

Based on the foregoing, the motion is DENIED WITH PREJUDICE as to the request for a flat fee under Local Bankr. R. 2016-1(c) and DENIED WITHOUT PREJUDICE as to the request for compensation under § 330(a).

The court will enter an order.

3. [19-91012](#)-B-13 KATHLEEN MILBURN MOTION TO CONFIRM PLAN
[RDR-8](#) Robert D. Rodriguez 8-18-20 [[153](#)]

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 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 confirm the fourth amended plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that the plan will take approximately 96 months to complete, but that this can be resolved by increasing plan payments to U.S. Rentals in the order confirming, and that no declaration is filed from the Debtor.

Debtor filed a response stating that she will increase plan payments to U.S. Rentals to \$254.41 so that the plan completes prior to 60 months. Debtor has also filed a declaration on September 1, 2020, in support of the motion to confirm.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, 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.

4. [20-90612](#)-B-13 ENRIQUE CAMARENA
[ADR-1](#) Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
9-7-20 [[9](#)]

ARTEM REV APHA LLC VS.

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 usually may appear at the hearing to offer oral argument. However, in light of the ongoing COVID-19 pandemic, 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 conditionally grant the motion for relief from stay and continue the hearing to **September 29, 2020, at 1:00 p.m.**

Artem Rev Apha LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 3025 Tully Road, #10, Modesto, California (the "Property"). Movant has provided the Declaration of Jordan Deboer to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Deboer Declaration states that Movant is the landlord of the Property. Movant provides evidence of a rental agreement entered between Movant and non-filing debtor Eloy Mendoza. Dkt. 13, exh. 1. Debtor did not enter into the rental agreement with Movant and Movant states that it has never seen Debtor. According to Debtor's claim of possession filed in a state court proceeding, Debtor claimed that he lived at the Property under an oral agreement with someone other than the Movant.

A three-day notice to pay rent or quit was served on February 7, 2020. Dkt. 13, exh. 2. As of February 12, 2020, the notice was expired, the rental agreement was terminated, and no rent was offered by the tenant or Debtor. Neither the tenant nor Debtor paid any money toward the three-day notice, and neither of them moved from the Property prior to the expiration of the notice. Movant files this motion for relief from stay in order to proceed with an unlawful detainer action in state court.

According to Movant, over \$9,000.00 in pre-petition rent is owed. Debtor has not paid any post-petition payments. No opposition has been filed by the Debtor.

Discussion

Movant presents evidence that it is the owner of the Property. A three-day notice to pay rent or quit has been served. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. § 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other

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appropriate judicial proceedings and remedies to obtain possession thereof.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

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, September 25, 2020, 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 Movant, 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 September 29, 2020, 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 September 29, 2020, at 1:00 p.m.

The court will issue an order.

5. [19-91014](#)-B-13 SANDRA RODRIGUEZ
[BSH](#)-5 Brian S. Haddix

CONTINUED MOTION TO CONFIRM
PLAN
8-2-20 [[86](#)]

Final Ruling

This matter is continued one final time to September 29, 2020, at 1:00 p.m. to allow Debtor Sandra Avila Rodriguez ("Debtor") and Wells Fargo Bank USA Holdings, Inc. ("Creditor") to reach an agreement regarding Creditor's secured claim as previously represented to the court.

If an agreement is not reached Creditor's limited objection at Docket 96 will be sustained, the Debtor's Fourth Amended Chapter 13 Plan will not be confirmed, and the Debtor's motion at Docket 86 will be denied without prejudice at the continued hearing on September 29, 2020. Modification of Creditor's contractual interest rate without Creditor's express consent violates 11 U.S.C. § 1322(b)(2). And to the extent that the party offering contribution income is unemployed, the fourth amended plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

If an agreement is reached the parties shall file a stipulation which states the terms of the agreement and withdraws Creditor's limited objection. A separate proposed order signed by all parties shall also be submitted with the stipulation. The stipulation shall be filed and the proposed order submitted no later than 12:00 p.m. on Monday, September 28, 2020. In the absence of any other objection, the fourth amended plan will be confirmed at the continued hearing on September 29, 2020. The terms of the parties' stipulation regarding the agreed-upon treatment of Creditor's claim shall be included in the confirmation order submitted to the Chapter 13 Trustee for review and signature.

The court will issue an order.

6. [18-90924](#)-B-13 MOSES/TONYA SMITH
[BSH](#)-4 Brian S. Haddix

MOTION TO MODIFY PLAN
8-17-20 [[74](#)]

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 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 Debtors have 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 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. [20-90243](#)-B-13 RAYMOND/MARYANN MARTINEZ MOTION TO CONFIRM PLAN
[JAD](#)-1 Jessica A. Dorn 8-3-20 [[30](#)]

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 Debtors have 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 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.

9. [16-90246](#)-B-13 LORENA PEREZ
[JAD](#)-4 Jessica A. Dorn

MOTION TO MODIFY PLAN
8-6-20 [[101](#)]

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.

11. [20-90451](#)-B-13 ALFRED/MARIA NEGRETE
[JAD](#)-1 Jessica A. Dorn

MOTION TO CONFIRM PLAN
8-5-20 [[21](#)]

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 Debtors have 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 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 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 seventh modified plan.

First, this appears to be the seventh, and not fifth, modified plan filed by the Debtor. Prior modified plans were filed on July 8, 2018; September 11, 2018; November 16, 2018; February 14, 2019; May 10, 2019; and October 7, 2019. None of those modified plan were confirmed.

Second, the Debtor is delinquent \$6,700.00 under the modified plan. 11 U.S.C. § 1325(a)(2).

Third, the Nonstandard Provisions of the modified plan states that "[f]or post-petition IRS and Franchise Board amounts due, the dividend shall be \$716 per month beginning in Month 38 (October 2019)." No proof of claim for Debtor's post-petition taxes has been filed pursuant to 11 U.S.C. § 1305. Without the filed proof of claim, it cannot be determined if Debtor's modified plan is feasible.

Fourth, the Debtor has not provided the Trustee with requested copies of her 2019 state and federal tax returns, and the 2018 federal tax return of her non-filing spouse, who filed his taxes as "married filing separately."

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

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

The court will issue an order.

13. [20-90477](#)-B-13 CARLOS/ANDREA PERALES
[RDG-1](#) Mark S. Nelson

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-27-20 [[23](#)]

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed July 8, 2020, will be confirmed.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE 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.

14. [20-90482](#)-B-13 RODNEY/KIMBERLY MIRANDA
[RDG-1](#) Mark S. Nelson

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-27-20 [[17](#)]

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.

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 of the plan on grounds that the plan relies on the value of Debtors' secured priority tax liability with the Internal Revenue Service. The IRS filed amended Claim No. 9-2 that reduces the Debtors' secured priority tax liability from \$16,633.00 to \$11,273.85, this lower amount which is provided for in the proposed plan. Therefore, the issue regarding Debtors' IRS tax liability is resolved.

Separately, the Debtors state that the Franchise Tax Board must also file an amended proof of claim since the current Claim No. 8-1 states a secured priority tax liability as "N/A." Until an amended claim is filed by the FTB, there appears to be no conflict with Debtor' proposed plan.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed July 10, 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.

15. [19-90889](#)-B-13 RAMIRO SALGADO
[BSH](#)-3 Brian S. Haddix

MOTION TO CONFIRM PLAN
7-17-20 [[86](#)]

Final Ruling

The motion 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 court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to deny the motion to confirm as moot.

A fourth amended plan was filed on July 31, 2020. The confirmation hearing for the fourth amended plan was held on September 8, 2020, and that plan was confirmed. Therefore, the third plan filed July 17, 2020, is not confirmed.

The motion is ORDERED DENIED AS MOOT for 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 not permit the requested modification and not confirm the first modified plan.

First, Debtor is delinquent \$2,580.00 under the proposed plan. The Nonstandard Provisions of Debtor's plan provides for the suspension of plan delinquencies through June 2020 then plan payments of \$2,580.00 beginning July 2020. The Chapter 13 Trustee's records indicate that the Debtor failed to make a plan payment in July 2020. 11 U.S.C. § 1325(a)(6).

Second, Debtor's plan fails to provide for post-petition arrears totaling \$1,291.88 to Class 1 creditor Sterns Lending LLC/Loancare LLC representing the month of July 2020. Without providing for these post-petition arrears, it cannot be determined whether the plan is feasible under 11 U.S.C. §1325(a)(6).

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

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

The court will issue an order.