

**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: January 3, 2023

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

January 3, 2023 at 1:00 p.m.

1. [22-90201](#)-B-13 BALJEET SINGH MOTION TO CONFIRM PLAN
[DCJ](#)-2 David C. Johnston 11-6-22 [[33](#)]

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not confirm the first amended plan.

First, Debtor's motion and declaration are silent as to the impact the granting of the automatic stay, dkt. 22, may have on the plan. As such, it cannot be determined whether the plan is feasible. 11 U.S.C. § 1325(a)(6).

Second, the plan provides for a lump sum of "\$129,300.00 from sale of home in month 7." There is no pending motion to sell in this case and any sale is highly speculative.

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.

January 3, 2023 at 1:00 p.m.

2. [22-90328](#)-B-13 NICASIO MALDONADO
[RDG-2](#) Pro Se

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-15-22 [[27](#)]

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 exemptions are disallowed in their entirety.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a)(2). California Code of Civil Procedure §703.140(a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal waiver has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

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

The court will issue an order.

3. [20-90146](#)-B-13 CHARLES/DAWN ROBINSON MOTION TO MODIFY PLAN
[DCJ](#)-2 David C. Johnston 11-6-22 [[49](#)]

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). 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 permit the requested modification and not confirm the modified plan.

Debtors' plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 7.01 of Debtors' plan provides for plan payments of \$2,155.00 beginning November 2022. The Debtors have failed to file supplemental Schedules I and/or Schedule J to support the plan payment. Without the updated schedules and pay advices, it cannot be determined whether the proposed plan is feasible.

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.

4. [22-90259](#)-B-13 MARTHA MARTIN
[TMO](#)-1 T. Mark O'Toole

MOTION TO CONFIRM PLAN
11-15-22 [[43](#)]

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not confirm the first amended plan.

First, the Debtor is delinquent \$5,060.00 in plan payments. The last and only payment was received on September 2, 2022, in the amount of \$600.00. 11 U.S.C. § 1325(a)(2).

Second, the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor's projected disposable monthly income listed on Schedule J is 660.00 and the Debtor proposes a plan payment of \$1,430.00.

Third, the plan provides for Specialized Loan Servicing as a Class 1 claim with pre-petition arrears in the amount of \$73,144.28 but fails to provide for a monthly dividend payable to those arrears. Without providing for the monthly dividend to pay that claim, Debtor's plan is not feasible. 11 U.S.C. § 1325(a)(6).

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.

5. [22-90372](#)-B-13 HERBERT BASA AND DEW THAO OBJECTION TO CONFIRMATION OF
[KMM](#)-1 BASA PLAN BY TOYOTA MOTOR CREDIT
Kristy A. Hernandez CORPORATION
11-30-22 [[13](#)]

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). Nonetheless, 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 overrule the objection as moot.

Subsequent to the filing of the Toyota Motor Credit Corporation's objection, the Debtors filed an amended plan on December 29, 2022. The confirmation hearing for the amended plan is scheduled for February 14, 2023. The earlier plan filed October 11, 2022, is not confirmed.

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

The court will issue an order.

6. [22-90378](#)-B-13 ROBERT HARDING
[RDG](#)-1 Charles L. Hastings

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-6-22 [[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 this objection.¹

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Rights and Responsibilities filed indicate that payments of attorney fees are to be made pursuant to Local Bankr. R. 2016-1(c) or the plan. However, no box has been checked in Section 3.05 of the plan and no dividend has been provided at Section 3.06 of the plan.

Second, the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor's projected disposable monthly income listed on Schedule J is -\$86.00 and the Debtor proposes a plan payment of \$100.00.

Third, Debtor's schedules list non-exempt assets totaling \$22,128.00, and unsecured priority claims totaling \$0. The Debtor has non-priority general unsecured claims totaling \$3,500.00. In order to meet the liquidation test of 11 U.S.C. § 1325(a)(4), Debtor's plan must pay 100% to general unsecured creditors, plus interest at the Federal Judgment Rate of 4.38%, since the value of the non-exempt assets exceeds the amount of the general unsecured claims.

The plan filed October 17, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

¹Although the Debtor did not file a response to the Chapter 13 Trustee's objection to confirmation, he did file a response to the objection by creditor Timothy. See dkt. 24. Debtor stated that the meeting of creditors was concluded and a number of the Trustee's objections will be resolved. However, not all issues have been resolved.

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). Opposition and a response were 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 permit the requested modification and not confirm the modified plan.

First, all sums required by the plan have not been paid. 11 U.S.C. § 1325(a)(2). The Debtor is delinquent \$2,881.00 under the proposed plan.

Second, Debtor's plan is not feasible under 11 U.S.C. §1325(a)(6). Debtor's plan states that all Class 1 pre-petition and post-petition arrears owed to Select Portfolio Services have been paid in full. Debtor states in her declaration that she was approved for relief under the California Mortgage Relief Program. Until Select Portfolio Services files an amended proof of claim or the debtor successfully objects to the claim filed by Select Portfolio Services, Debtor's plan is not feasible.

Third, it is unclear how the Debtor was able to secure approval through the California Mortgage Relief Program since a requirement of the program for applicants who are bankruptcy debtors is to provide a letter signed by their bankruptcy trustee. The Chapter 13 Trustee has not provided to the Debtor or her counsel any letter.

The Debtor filed a response stating that she will file any additional correspondence and documentation regarding her approval for the California Mortgage Relief Program. However, no such documentation or supplemental declaration was filed.

Given the aforementioned, 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.

8. [19-90303](#)-B-13 SONIA PALACIOS
[RDG](#)-1 Brian S. Haddix

CONTINUED MOTION TO DISMISS
CASE
12-6-22 [[76](#)]

Final Ruling

This matter was continued from December 20, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, December 23, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 80, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on January 3, 2023, at 1:00 p.m. is vacated.

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

The court will issue an order.

9. [22-90416](#)-B-13 JENNY TUNGSETH
[RDG](#)-1 Pro Se

CONTINUED MOTION TO DISMISS
CASE
12-6-22 [[18](#)]

Final Ruling

This matter was continued from December 20, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, December 23, 2022. Debtor filed a timely response requesting her case not be dismissed in light of the continued meeting of creditors. The Debtor has also filed an amended plan, which resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 22 and the continued hearing on January 3, 2023, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

10. [22-90017](#)-B-13 IVAN/JANET AGASSI
[RDG](#)-3 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
12-6-22 [[57](#)]

Final Ruling

This matter was continued from December 20, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, December 23, 2022. Debtors filed a timely response requesting their case not be dismissed since they are current on plan payments and have filed a third amended plan. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 61 and the continued hearing on January 3, 2023, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

11. [22-90224](#)-B-13 SCOTT SALA CONTINUED OBJECTION TO
[RDG](#)-1 Marc Voisenat CONFIRMATION OF PLAN BY RUSSELL
Thru #12 D. GREER
9-1-22 [[20](#)]

CONTINUED TO 1/31/23 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 1/25/23.

Final Ruling

No appearance at the January 3, 2023, hearing is required. The court will issue an
order.

12. [22-90224](#)-B-13 SCOTT SALA CONTINUED MOTION TO DISMISS
[RDG](#)-2 Marc Voisenat CASE
10-7-22 [[26](#)]

CONTINUED TO 1/31/23 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 1/25/23.

Final Ruling

No appearance at the January 3, 2023, hearing is required. The court will issue an
order.

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

CONTINUED TO 1/31/23 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 1/25/23.

Final Ruling

No appearance at the January 3, 2023, hearing is required. The court will issue an
order.