

**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 9, 2024

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 9, 2024 at 1:00 p.m.

1. [22-90101](#)-B-13 PAMELA PELL MOTION TO MODIFY PLAN
[SSH](#)-3 Simran Singh Hundal 11-29-23 [[53](#)]

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.

January 9, 2024 at 1:00 p.m.

Page 1 of 15

2. [23-90502](#)-B-13 LYNNE ERNST MOTION TO CONFIRM PLAN
 [KLG](#)-1 Arete Kostopoulos 11-22-23 [[32](#)]

CONTINUED TO 1/30/24 AT 1:00 P.M. IN MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 1/24/24.

Final Ruling

No appearance at the January 9, 2024, hearing is required. The court will issue an order.

3. [23-90308](#)-B-13 CHAD MCCLELLAND
[BSH](#)-2 Brian S. Haddix

MOTION TO CONFIRM PLAN
11-17-23 [[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 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.

4. [23-90509](#)-B-13 ANITA STUBENRAUCH
[CAS](#)-1 Matthew D Metzger
Thru #5 OBJECTION TO CONFIRMATION OF
PLAN BY JPMORGAN CHASE BANK, NA
12-21-23 [[26](#)]

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's decision is to overrule the objection.

Objecting creditor JPMorgan Chase Bank, NA holds a deed of trust secured by the Debtor's residence. The creditor states that there are pre-petition arrears but has not yet filed a proof of claim. Additionally, the creditor provides no evidence to support the objection or a declaration from any individual who maintains or controls the bank's loan records. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, the plan filed November 14, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at LGT-1.

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

The court will issue an order.

5. [23-90509](#)-B-13 ANITA STUBENRAUCH
[LGT](#)-1 Matthew D Metzger
OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
12-18-23 [[22](#)]

Final Ruling

The *initial* Chapter 13 Plan filed November 14, 2023, is not confirmable and the objection is not one that may be resolved in the confirmation order. While this is with regard to the *initial* Chapter 13 Plan and the procedure in Local Bankr. R. 3015-1(c)(4) and 9014-1(f)(2) applies, Anita A. Stubenrauch ("Debtor") has already filed a conditional non-opposition to the Chapter 13 Trustee's objection to confirmation.

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

First, Debtor's Disclosure of Compensation of Attorney for Debtors (Form 2030) at Line 6 states that the agreed upon fee of \$5,500.00 does not include judicial lien avoidances and relief from stay actions. These services are included in the "No Look Fee" and should not be excluded. These services are also mandatory basic services under Local Bankr. R. 2017-1(a)(1).

Second, Debtor and her attorney have failed to file a Statement of Rights and Responsibilities. As such, the payments of attorney fees cannot be made pursuant to Local Bankruptcy Rule 2016-1(C) or Debtor's plan.

Third, Debtor's Form 122C-1 lists Debtor's net income from a business on line 5 as \$333.33 per month. However, a profit and loss statement provided to the Chapter 13 Trustee for Debtor's business for the period of April 2023 through September 2023 shows a total gross income of approximately \$2,627.50 a month. Without a detailed month-by-month analysis, it cannot be determined whether the plan provides that all of Debtor's projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Fourth, Debtor's plan fails the liquidation test of 11 U.S.C. § 1325(a)(4). Debtor's schedules list non-exempt assets totaling \$10,466.17 and unsecured priority claims totaling \$3,941.62. Accordingly, there are non-exempt assets available for distribution to Debtor's general unsecured creditors of \$6,524.55 (\$10,466.17 minus \$3,941.62). Based on a review and analysis of Debtor's schedules, Debtor has non-priority general unsecured claims totaling \$100,920.61. In order to meet the liquidation test of 11 U.S.C. § 1325(a)(4), Debtor's plan must pay 6.47% to Debtor's general unsecured claims. Debtor's plan only provides for 0.06% dividend to general unsecured creditors. Accordingly, Debtor's plan fails the liquidation test.

Fifth, Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 2.01 of Debtor's plan provides for plan payments of \$5,470 for 36 months. Debtor has failed to provide admissible evidence that their plan is mathematically feasible. Trustee's calculations indicate that Debtor's plan payment will need to be at least \$6,293.00 in order for Debtor's plan to be feasible.

Sixth, Debtor's plan provides for the amount of arrears due to JP Morgan Chase Bank N.A. at \$50,602.40, to be paid an average monthly dividend of \$843.38. The plan is a 36-month plan and the monthly dividend proposed for the filed Class 1 arrearage claim of JP Morgan Chase Bank N.A. will take 59 months to pay. Therefore, the plan is not feasible under 11 U.S.C. § 1325(a)(6).

Seventh, Debtor's plan and petition are not proposed in good faith under 11 U.S.C. §1325(a)(3)(7) due to Debtor's exemptions. Debtor's Schedule C exempts an amount of \$81,050.00 for line 6.1 Household Goods and Furnishings. This does not qualify as "ordinarily and reasonably necessary" under CCP § 704.020. Additionally, Debtor's Schedule C exempts an amount higher than the current value listed on Schedule A/B for lines 6.4 Household: Misc Building Supplies, 8.1 Collectibles: Art, and 12.1 Jewelry. Based on the above, the accuracy of the filed schedules is unclear.

Eight, amended schedules are required because the petition fails to list Debtor's current mailing address and Schedule I fails to list Debtor's business name and address.

The plan filed November 14, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

6. [23-90517](#)-B-13 RICKY DEL PONTE
[BSH](#)-1 Brian S. Haddix

MOTION TO CONFIRM PLAN
11-9-23 [[13](#)]

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.

7. [23-90522](#)-B-13 PATRICIA OCHSNER OBJECTION TO CONFIRMATION OF
 [LGT](#)-1 David C. Johnston PLAN BY LILIAN G. TSANG
 12-18-23 [\[20\]](#)

CONTINUED TO 1/16/24 AT 1:00 P.M. IN MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 1/10/24.

Final Ruling

No appearance at the January 9, 2024, hearing is required. The court will issue an order.

8. [23-90435](#)-B-13 CARLOS ELVIR ORDONEZ CONTINUED OBJECTION TO
[LGT](#)-1 Eric J. Gravel CONFIRMATION OF PLAN BY LILIAN
DEBTOR DISMISSED: 12/05/23 G. TSANG
11-2-23 [[16](#)]

Final Ruling

The case having been dismissed on December 5, 2023, the objection to confirmation of plan is overruled as moot.

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

The court will issue an order.

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 dismiss case.

Creditor Farmers & Merchants Bank of Central California ("F&M Bank") moves for an order under 11 U.S.C. § 1307(c) dismissing the chapter 13 case of Debtor Vickiy Myers ("Myers"). Section 1307(c) authorizes a court to dismiss a debtor's bankruptcy case for cause. F&M Bank asserts three grounds in its dismissal motion. First, although Debtor's bankruptcy schedules projected her to earn \$335 in disposable monthly income to fund a chapter 13 plan, Debtor's source documentation refutes this projection and reflects a negative monthly income. As such, § 109(e) disqualifies Debtor from obtaining chapter 13 relief. Second, Debtor's failure to present a confirmable chapter 13 plan provides cause for dismissal under § 1307(c)(1) and (5). This court denied her first chapter 13 plan on November 28, 2023. Debtor's unreasonable delay in confirming a chapter 13 is prejudicial to her creditors.

Debtor has not filed a timely response to F&M Bank's motion to dismiss case, amended schedules, or an amended plan that would resolve the issues raised.

Given the aforementioned, Debtor appears ineligible for chapter 13 relief and has little nonexempt assets to pay F&M Bank, the only creditor that filed a claim and participated in this case. Dismissal is in the best interest of creditors and the estate. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c). The motion is granted and the case is dismissed.

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

The court will issue an order.

10. [21-90264](#)-B-13 VICTOR PEDROZA MOTION TO MODIFY PLAN
[MJD](#)-1 Matthew J. DeCaminada 11-21-23 [[41](#)]

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. [23-90468](#)-B-13 JALEESA BERNASTEIN MILLER MOTION FOR RELIEF FROM
[PPR](#)-1 Christian J. Younger AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
NASA FEDERAL CREDIT UNION 12-12-23 [[15](#)]
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.

NASA Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Jeep Cherokee (the "Vehicle"). The moving party has provided the Declaration of Barry Henry to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Henry Declaration states that there are four post-petition payments in default totaling \$1,909.28 and that the Debtor intends to surrender her interest in the Vehicle. This is supported by the plan filed October 17, 2023, and confirmed on December 12, 2023, which lists the secured claim as satisfied by the surrender of collateral in Class 3.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case. Indeed, the Vehicle is listed in Class 3 to be surrendered by the Debtor.

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.

12. [20-90473](#)-B-13 DONALD/LOUISE BUIE
[MSN](#)-2 Mark S. Nelson

MOTION TO MODIFY PLAN
11-8-23 [[44](#)]

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.

13. [22-90379](#)-B-13 JAMES MAHONEY
[LGT](#)-1 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
12-1-23 [[83](#)]

Final Ruling

This matter was continued from December 18, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, December 22, 2023. Debtor filed a timely response stating that he will file a motion to sell property in the near future, and the Debtor has filed a fourth amended plan with a scheduled confirmation hearing date of February 6, 2024, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 92 and the continued hearing on January 9, 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.

14. [23-90279](#)-B-13 DANIEL FIKES
[NB-1](#) Mikalah Liviakis

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-30-23 [[24](#)]

BANK OF STOCKTON VS.

Final Ruling

Bank of Stockton has failed to use the Official Certificate of Service Form required by Local Bankr. R. 7005-1. This form is mandatory for attorneys and trustees as of November 1, 2022. Accordingly, the motion for relief from automatic stay is denied without prejudice.

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

The court will issue an order.