

**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: February 2, 2021

CALENDAR: 1:00 P.M. CHAPTER 13

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

February 2, 2021 at 1:00 p.m.

1. [19-90808](#)-B-13 JOSE/LUCIA ROMO MOTION TO MODIFY PLAN
[MSN](#)-1 Mark S. Nelson 12-22-20 [[34](#)]

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.

February 2, 2021 at 1:00 p.m.

Page 1 of 13

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 fifth amended plan.

The Chapter 13 Trustee objects to plan confirmation on grounds that the Debtor is \$330.00 delinquent in plan payments. The Debtor filed a response stating that payment was made to the Trustee on January 20, 2021, and that she is current on plan payments.

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.

3. [19-90017](#)-B-13 RAY/KATHLEEN PERRY MOTION TO MODIFY PLAN
[MSN](#)-5 Mark S. Nelson 12-18-20 [[83](#)]
Thru #4

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.

Feasibility depends on the granting of a motion for hardship discharge. That motion is granted at Item #4, MSN-6.

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. 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.

4. [19-90017](#)-B-13 RAY/KATHLEEN PERRY MOTION FOR HARDSHIP DISCHARGE
[MSN](#)-6 Mark S. Nelson 12-18-20 [[89](#)]

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 hardship discharge.

Joint debtor Kathleen Perry ("Joint Debtor") requests a hardship discharge on grounds that circumstances out of her control have arisen and which cause her to be unable to complete plan payments. Debtor Ray Perry ("Debtor") passed away on September 3, 2020, and this has also resulted in the loss of his pension in the amount of \$7,461.12. The Debtors' monthly income had consisted of Debtor's pension, Debtor's social security benefit of \$649.00, Joint Debtor's social security benefit of \$187.00, and Joint Debtor's mother's social security income of \$1,200.00 for a total monthly income of \$11,947.12. Joint Debtor's new monthly income is now reduced to \$8,624.94. Joint Debtor's expenses are currently \$9,319.00 and she is therefore unable to complete the

plan payments.

Concurrently with this motion, Joint Debtor has also filed a motion to modify plan. See Item #3, MSN-5. The modified plan proposes to surrender a 2011 Ford Edge and use the funds on hand to pay allowed general unsecured creditors a minimum 5.44% dividend so that the plan may pass the chapter 7 liquidation test. Further modification of the plan is not practical since Joint Debtor does not have disposable income to make plan payments due to the loss of her late-husband's full monthly pension income.

Discussion

After confirmation of a plan, circumstances may arise that prevent a debtor from completing a plan of reorganization. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if : (b) (1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (b) (2) creditors have received at least as much as they would have received in a chapter 7 liquidation case; and (b) (3) modification of the plan is not possible under 11 U.S.C. § 1329. 11 U.S.C. § 1328(b) (1)-(3).

Here, Joint Debtor has satisfied 11 U.S.C. § 1328(b) (1)-(3). First, Joint Debtor is unable to complete plan payments due to circumstances beyond her control, namely her husband's death and the loss of his full monthly pension income. Second, with the surrender of Joint Debtor's vehicle and using funds on hand, Joint Debtor will be able to pay allowed general unsecured creditors a minimum 5.44% dividend, which is at least what they would have received in a chapter 7 case. Third, modification of the plan is not possible because there is no disposable income left over to pay the plan with the loss of her late-husband's full monthly pension income.

The court grants the motion and the clerk of the court shall issue a discharge pursuant to 11 U.S.C. § 1328(b).

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

The court will issue an order.

5. [20-90719](#)-B-13 ISAIAS CASTELLANOS OBJECTION TO CONFIRMATION OF
GB-1 Gregory J. Smith PLAN BY VIDA CAPITAL GROUP LLC
Thru #6 1-19-21 [[49](#)]

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.

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 sustain the objection for reasons stated at Item #6, JCK-3.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

The court will issue an order.

6. [20-90719](#)-B-13 ISAIAS CASTELLANOS MOTION TO CONFIRM PLAN
[JCK-3](#) Gregory J. Smith 12-21-20 [[35](#)]

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 by the Chapter 13 Trustee and a response was filed by the Debtor.

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 confirm the first amended plan.

Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. §1325(a)(6). The non-standard provisions of Debtor's plan provide for plan payments of \$1,100.00 for December 2020, \$1,670.00 a month from January 2021 through June 2021, and \$140,764.00 or an amount necessary to complete the Chapter 13 plan for July 2021. Section 7.05 of the plan states that the \$140,764.00 will be from the proceeds of the refinancing of the real property. Feasibility of Debtor's plan is contingent upon the motion to refinance the real property at 4200 Lander Avenue, Turlock, California, on or

before July 2021. Therefore, feasibility of the plan at this time is 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.

7. [16-90246](#)-B-13 LORENA PEREZ
[JAD](#)-5 Jessica A. Dorn

MOTION TO MODIFY PLAN
12-14-20 [[112](#)]

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.

8. [20-90753](#)-B-13 ELLEN ST. CLAIR
[RDG](#)-1 David C. Johnston

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-12-21 [[21](#)]

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 sustain the objection and deny confirmation of the plan.

First, the Debtor has failed to provide documents with regard to her 50% interest in Carpet Man Pro Flooring, Inc. Without these documents, it cannot be determined whether the plan is feasible nor the liquidation value of the estate.

Second, Debtor's interest in real property located at 1360 Shady Lane, Apartment 1022, Turlock, California, is unclear. Debtor provided \$30,000 as down payment to purchase the condo but stated that she would receive half of the proceeds from her son should the property be sold. There is no written agreement between the Debtor and her son. It cannot be determined whether the plan is proposed in good faith. 11 U.S.C. § 1325(a)(3).

The plan filed December 5, 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.

9. [20-90755](#)-B-13 DAVID TOUCHSTONE
[RDG](#)-1 Brian S. Haddix

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-12-21 [[15](#)]

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 Trustee's objection, the Debtor filed an amended plan on January 19, 2021. The confirmation hearing for the amended plan is scheduled for March 2, 2021. The earlier plan filed November 21, 2020, is not confirmed.

The objection is ORDERED 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 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 and a response were 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 second amended plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that there is no supporting evidence that the Debtors will collect rent to cover their mortgage payment. The Debtors filed a response stating that they have entered into an agreement to rent out their real property and have filed as an exhibit the lease agreement. Debtors also filed amended schedules on January 29, 2021, to reflect the changes in income and expenses.

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 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.

11. [19-90571](#)-B-13 LATONA BOWERS
[LBF](#)-2 Lauren Franzella

CONTINUED OBJECTION TO NOTICE
OF MORTGAGE PAYMENT CHANGE
9-22-20 [[66](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Debtor having filed a notice of withdrawal of its objection, the objection is 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.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

12. [15-90987](#)-B-13 ALAN/BARBARA PAYNE
[JAD](#)-2 Jessica A. Dorn

CONTINUED MOTION TO MODIFY PLAN
12-10-20 [[53](#)]

Final Ruling

This matter was continued from January 19, 2021, to provide additional time for the Internal Revenue Service to file an amended proof of claim. Dkt. 66. No amendment has been 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 confirm the modified plan.

Debtors' plan is not feasible under 11 U.S.C. §1325(a)(6). Section 7.04 of Debtors' plan provides for post-petition tax debt owed to the Internal Revenue Service in the total amount of \$4,296.05 (\$2,023.05 for the year 2015 and \$2,273.00 for the year 2017). As of this date, a proof of claim that includes Debtors' post-petition taxes has not been filed pursuant to 11 U.S.C. §1305.

The modified plan does not 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.

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 proof of claim filed by the Debtor on behalf of creditor Stanislaus County Tax Collector is ambiguous and does not match the plan's treatment of the claim.

Debtor filed a response stating that the creditor has filed an amended claim that supercedes the Debtor's filed claim. Creditor's amended claim filed January 27, 2021, is referenced as being secured. Debtor's plan provides for payment of creditor's claim with the statutory interest of 18%. The Debtor is current on plan payments.

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. 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.