

**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 6, 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.

Eastern District of California

February 6, 2024 at 1:00 p.m.

SPECIALIZED LOAN SERVICING
LLC VS.

Final Ruling

The parties having entered into a stipulation for adequate protection regarding the motion for relief from automatic stay, and the court having approved the order on January 24, 2024, the motion is denied as moot.

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

The court will issue an order.

2. [23-90537](#)-B-13 CHERYL PORTER OBJECTION TO CONFIRMATION OF
 [LGT](#)-1 SCHIMMELFENNIG PLAN BY LILIAN G. TSANG
 Gordon G. Bones 1-8-24 [[16](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). 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 Chapter 13 Trustee's objection, the Debtor filed an amended plan on January 29, 2024. The confirmation hearing for the amended plan must still be set. Nonetheless, the earlier plan filed November 10, 2023, is not confirmed.

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

IT IS FURTHER ORDERED that the Debtor shall file a motion to confirm the amended plan and set it for hearing in accordance with the applicable local rules by February 9, 2024.

The court will issue an order.

3. [23-90549](#)-B-13 MICHAEL ANGELO OBJECTION TO CONFIRMATION OF
[LGT](#)-1 Pro Se PLAN BY LILIAN G. TSANG
Thru #4 1-10-24 [[25](#)]

Final Ruling

The case having been dismissed at Item #11, LGT-2, the objection to confirmation of plan is overruled as moot.

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

The court will issue an order.

4. [23-90549](#)-B-13 MICHAEL ANGELO OBJECTION TO CONFIRMATION OF
[NLG](#)-1 Pro Se PLAN BY SELENE FINANCE LP
12-29-23 [[21](#)]

Final Ruling

The case having been dismissed at Item #11, LGT-2, the objection to confirmation of plan is overruled as moot.

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

The court will issue an order.

5. [23-90555](#)-B-13 KIMBERLEY/CROFF BAKER
[LGT](#)-1 Susan D. Silveira

AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY LILIAN
G. TSANG
1-26-24 [[17](#)]

Final Ruling

The amended 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 was filed.

The court's decision is sustain the amended objection that recommends confirmation with the following corrections.

First, Debtors' plan provides for attorney fees in the amount of \$9,200.00 to be paid at a monthly dividend of \$250.00. Pursuant to Local Bankruptcy Rule 2016-1(c)(4)(B), the payment of no-look attorney's fees must be paid in equal monthly installments over the term of the plan. Debtors' plan is a 60-month plan. Trustee estimates a monthly dividend of \$153.33 is necessary to pay the claim in full within Debtors' 60-month plan term. The Trustee has no opposition to placing this correction in the order confirming plan.

Second, Class 7 of Debtors' plan lists 0.034% percent dividend to the unsecured creditors. Through information provided by Debtors' counsel, the Trustee has been advised that this should have been listed as 3.43% dividend to the unsecured creditors. The Trustee has no opposition to correcting this typo in the order confirming plan, and this correction would resolve the liquidation issue.

Third, Debtors' Schedule J (DN 1, page 34) at line 21 shows an expense of \$250.00 per month for "Savings/Misc". Through information provided by Debtors' counsel, the savings are for Mr. Baker's serious health issues. The Trustee requests Debtors file a declaration with the court regarding the need for \$250 in savings deduction and an itemization of related expenses. The court agrees.

Provided that the Debtors address the above issues in their order confirming plan and by the filing of a declaration, the plan filed November 24, 2023, will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). The amended objection is sustained and the plan is confirmed.

The amended objection is ORDERED SUSTAINED 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.

6. [22-90157](#)-B-13 OSCAR/SANDRA LOPEZ
[LBF](#)-3 Lauren Franzella

MOTION TO MODIFY PLAN
12-20-23 [[90](#)]

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 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 fourth amended plan.

First, the duration of payments are inconsistent. Section 2.01 contemplates payments for 60 months while Section 2.03 lists a duration of plan payments for 19 months.

Second, the Debtor is \$149,924.00 delinquent in plan payments through December 25, 2023. The Debtor has paid \$61,782.00 into the plan to date. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the plan provides for Truist Bank as a Class 1 creditor with pre-petition arrears of \$98,326.31 and a post-petition monthly payment of \$4,091.71. Debtor's payments to the Chapter 13 Trustee have been inconsistent and in various amounts, and the Trustee was unable to disburse to the Class 1 creditor post-petition claim in the months of November 2022 and February, April, and June 2023. While disbursements in the amount of \$8,183.42 were made by the Trustee in the months of March, May and July 2023, the post-petition claim of Truist Bank remains in arrears. The Debtor's plan does not provide for postpetition arrears and accordingly is not feasible. 11 U.S.C. § 1325(a)(6). This issue was raised in the civil minutes dated October 17, 2023, and the Debtor has failed to address it.

Fourth, the plan provides for payments of \$3,824.00 a month for 4 months, \$4,641.00 for 10 months, and \$5,000.00 a month for 46 months, and a lump sum payment of \$150,000.00 in month 14/December 2023 from the sale of the bare land adjacent to Debtor's home. However, December 2023 has already passed without the sale of the bare land. There is no pending motion to sell in the Debtor's case despite the sale having been contemplated as long ago as November 2022. The court questions whether the Debtor even intends to sell the bare land. At this time, it cannot be determined whether Debtor's plan is feasible. 11 U.S.C. § 1325(a)(6).

Fifth, Debtor's Schedule J filed at the inception of the case evidences monthly net income of \$3,883.00. Debtor has failed to file amended Schedules I and J to demonstrate his ability to make the increased plan payments of the proposed plan. Until amended schedules are filed, it cannot be determined if debtor's plan is feasible. 11 U.S.C. § 1325(a)(6).

Sixth, creditor Debrah E. Anderson-Mahoney filed claim no. 9 listing a secured amount of \$700,000.00. Debtor's plan does not list this claim. Debtor's schedules I and J, and Statement of Financial Affairs are silent as to treatment for this creditor. It cannot be determined whether Debtor intends to pay this creditor and, if it is to be paid, how it is to be paid. This impacts whether Debtor will be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6).

Additionally, the Civil Minutes of December 19, 2023, Docket 92, entered on the Trustee's motion to dismiss which was filed on December 1, 2023, dkt. 83, include notice to the Debtor that, based on the Debtor's history of repeatedly filing amended plans in response to the Trustee's several motions to dismiss, this Chapter 13 case

would be converted to a chapter 7 case rather than dismissed if, in response to the Trustee's motion to dismiss, the Debtor filed another amended plan which was not confirmed. The Debtor appears to have done precisely that.

The Debtor filed a Fourth Amended Plan and motion to confirm it on December 17, 2023. Dkts. 87-91. As noted above, confirmation of the Fourth Amended Plan will be denied. However, because the Debtor filed the Fourth Amended Plan before the court's notice of the consequences of the failure to confirm an amended plan were formally filed in the Civil Minutes, the court will provide the Debtor with one more (and final) opportunity to propose a confirmable plan and confirm it.

IT IS THEREFORE ORDERED that a Fifth Amended Plan and a motion to confirm it shall be filed, set, and served by **February 13, 2024**. If not timely filed, set, and served, as previously noted, this case may be converted on the Trustee's ex parte application. If timely filed, set, and served and the Fifth Amended Plan is not confirmed, as previously noted, this case may be converted on the Trustee's ex parte application.

The court also notes this case was filed on October 17, 2022. It is currently February 5, 2024. This case has therefore been pending for 477 days and, to date, no plan has been confirmed. In addition to manipulation of the bankruptcy process by repeatedly filing unconfirmable amended plans to avoid dismissal, the absence of a confirmed plan for 477 days is cause to convert under 11 U.S.C § 1307(c) (1), (5).

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.

8. [23-90279](#)-B-13 DANIEL FIKES
[NB-2](#) Mikalah Liviakis

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-10-24 [[33](#)]

BANK OF STOCKTON 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.

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 **conditionally grant the motion and continue the matter to February 13, 2024, at 1:00 p.m.**

Bank of Stockton ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2019 Springdale Travel Trailer (the "Vehicle"). The moving party has provided the Declaration of Jennifer Nicodemus to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Nicodemus Declaration states that the Debtor defaulted on his monthly loan payments in June 2023 and has not made any post-petition payments.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$25,713.82, as stated in the Nicodemus Declaration, while the value of the Vehicle is determined to be \$25,000.00, as stated in Schedules A/B filed by Debtor.

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.

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.

Conditional Nature of this Ruling

February 6, 2024 at 1:00 p.m.
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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, February 9, 2024, 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 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 February 13, 2024, 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 February 13, 2024, at 1:00 p.m.

9. [22-90093](#)-B-13 JAMES RIDDLE
[JNV](#)-8 Jason N. Vogelpohl

MOTION TO MODIFY PLAN
12-13-23 [[133](#)]

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.

10. [23-90520](#)-B-13 DIANE VARGAS
[LGT](#)-1 Pro Se

CONTINUED MOTION TO DISMISS
CASE
1-9-24 [[26](#)]

Final Ruling

This matter was continued from January 30, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 2, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 36, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on February 6, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.

11. [23-90549](#)-B-13 MICHAEL ANGELO
[LGT](#)-2 Pro Se
See Also #3-4

CONTINUED MOTION TO DISMISS
CASE
1-16-24 [[29](#)]

Final Ruling

This matter was continued from January 30, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 2, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 33, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on February 6, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.

12. [22-90353](#)-B-13 KELLY SEARS
[LGT](#)-1 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
1-9-24 [[122](#)]

Final Ruling

This matter was continued from January 30, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 2, 2024. Nothing was filed. However, the case was converted on February 2, 2024. Therefore, the motion to dismiss case is denied as moot.

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

The court will issue an order.