

**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 8, 2022

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 8, 2022 at 1:00 p.m.

1. [20-90001](#)-B-13 CARLA TURNER MOTION TO MODIFY PLAN
[LBF](#)-1 Lauren Franzella 12-22-21 [[121](#)]

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.

February 8, 2022 at 1:00 p.m.

2. [21-90472](#)-B-13 CARL GONSALVES
[RDG-1](#) Pro Se
Thru #3

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D GREER
11-18-21 [[22](#)]

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 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 Debtor did not appear at the meeting of creditors held November 17, 2021, December 1, 2021, January 5, 2021, January 19, 2021, and February 2, 2022, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Third, Debtor's plan fails the liquidation test of 11 U.S.C. §1325(a)(4). Debtor's schedules list non-exempt assets totaling \$328,000.00, and unsecured priority claims totaling \$0.00. Accordingly, there are non-exempt assets available for distribution to Debtor's general unsecured creditors of \$328,000.00 (\$328,000.00 minus \$0.00). The Trustee estimates, based on a review and analysis of Debtor's schedules and claims filed to date, that Debtor has non-priority general unsecured claims totaling \$10,000.00. In order to meet the liquidation test of 11 U.S.C. §1325(a)(4), Debtor's plan must pay 100% (\$328,000.00 divided by \$10,000.00) to Debtor's general unsecured creditors. Debtor's plan fails to indicate a percentage to the general unsecured creditors, and, accordingly, it fails the liquidation test of 11 U.S.C. §1325(a)(4).

Fourth, the Debtor does not appear to have the ability to fund the plan. The plan provides a monthly payment of \$125.00 to general unsecured creditors. However, Debtor's Schedule J, Line #23 shows a monthly net income of -\$90.00. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fifth, the Debtor has failed to provide evidence that the plan is mathematically feasible. Debtor's Schedule D lists a secured claim for Mr. Cooper for a property located at 1032 Deena Way, Fallon, NV. Debtor's plan does not provide for this secured claim, and without doing so, Trustee is unable to tell whether Debtor intends to pay this creditor. Debtor's plan is not feasible pursuant to 11 U.S.C. § 1325(a)(6).

The plan filed October 8, 2021, 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.

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). 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 grant the motion to dismiss the case (as consolidated with Case No. 22-90010) with a bar to refile under 11 U.S.C. § 109(g)(1).

First, without justification or excuse, the Debtor failed to appear at the meeting of creditors held November 17, 2021, December 1, 2021, January 5, 2021, January 19, 2021, and February 2, 2022. This is cause to dismiss the case pursuant to 11 U.S.C. § 1307(c). The Debtor's failure to appear at the creditors' meeting also prevents the court from confirming a plan due to the Trustee's inability to examine the Debtor before a plan is or may be considered for confirmation.

Second, the Debtor has not provided the Trustee with copies of payment advices. The Debtor has not complied with 11 U.S.C. §521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1, and, accordingly, breached the duties imposed by 11 U.S.C. §§521(a)(3) and (4) to cooperate with Trustee and provide him with financial records.

Third, the Debtor has filed five previous non-productive bankruptcy cases since October, 2009, all of which have been dismissed: October 9, 2009 (dismissed by court pursuant to §521(i) on November 24, 2009); January 8, 2010 (dismissed by court pursuant to §521(i) on February 23, 2010); April 13, 2010 (dismissed by court order to show cause on July 19, 2010); August 24, 2011 (dismissed by Trustee's motion on December 22, 2011); and January 29, 2020 (dismissed by Trustee's motion on April 23, 2020). With this case (No. 21-90472) still pending, the Debtor also filed another chapter 13 petition in this court on January 11, 2022 (Case No. 22-90010) which the court consolidated with this case (No. 21-90472) pursuant to Fed. R. Bankr. P. 1015(a) on February 4, 2022. Debtor's multiple bankruptcy filings are an abuse of the bankruptcy process, bad faith, and an unreasonable delay that is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The foregoing conduct by the Debtor further establishes a failure by the Debtor to appear before the court in proper prosecution of the case. See 11 U.S.C. § 109(g)(1).

The court considers dismissal with a 180-day bar to refile rather than conversion in the best interests of creditors and the estate. The 180-day re-filing bar under 11 U.S.C. § 109(g)(1) will prevent further abusive and bad faith filings which waste judicial resources. The secured creditor with a deed of trust on the real property listed in the Schedules has been granted relief under 11 U.S.C. § 362(d)(4). And although the Schedules reflect non-exempt assets, the docket reflects that there may be no equity in the assets for the benefit of creditors in a chapter 7 case. The Debtor may have also acquired his interest in the real property listed in the Schedules by an unauthorized or invalid transfer. See Dkts. 34, 35.

Cause exists to dismiss. The motion is ORDERED GRANTED and the case (as consolidated with Case No. 22-90010) is dismissed with dismissal of this (and the consolidated case) subject to the 180-day bar to refile under 11 U.S.C. § 109(g)(1).

The court will issue an order.

4. [18-90023](#)-B-13 JOSEPH SHAW AND MARY CONTINUED MOTION TO COMPROMISE
[RLF](#)-5 INDERBITZIN-SHAW CONTROVERSY/APPROVE SETTLEMENT
Shane Reich AGREEMENT WITH MEMORIAL
MEDICAL, ET AL.
1-12-22 [[91](#)]

Final Ruling

This matter was continued from February 1, 2022, to allow an opposition or response to be filed by any party in interest. No opposition or response was filed. Therefore, the court's conditional ruling at dkt. 97 granting the motion shall be the court's final decision. The continued hearing on February 8, 2022, at 1:00 p.m. is vacated.

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

The court will issues an order.