

**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 15, 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 15, 2022 at 1:00 p.m.

1. [18-90506](#)-B-13 ROBIN HAMADE-GAMMON MOTION TO CONFIRM PLAN
[BHS](#)-9 Brian S. Haddix 12-2-21 [[170](#)]

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 continue the hearing to March 1, 2022 at 1:00 p.m. on the fourth amended plan.

Debtors' plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 7 of Debtors' plan proposes a monthly payment of \$165.00 beginning October 2021. Debtors have failed to file supplemental Schedules I and/or Schedule J to support the plan payment. It cannot be determined whether the proposed plan is feasible.

Nevertheless, since the only deficiency appears to be the absence of amended Schedules the court will continue the hearing to provide the Debtor with an opportunity to file and serve the amended Schedules necessary for plan confirmation. Therefore, amended Schedules shall be filed and served by February 22, 2022, and the confirmation hearing is continued to March 1, 2022, at 1:00 p.m.

The hearing on the motion is ORDERED CONTINUED to March 1, 2022 at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

February 15, 2022 at 1:00 p.m.

2. [20-90316](#)-B-13 SHERYL BOLIN
[TLC](#)-1 Tamie L. Cummins

MOTION TO MODIFY PLAN
12-23-21 [[21](#)]

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.

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 Department of Housing and Urban Development ("HUD") holds a deed of trust secured by the Debtor's residence. Similarly, the Internal Revenue Service ("IRS") also holds a deed of trust secured by the Debtor's residence. HUD has filed a timely proof of claim in which it asserts \$235,769.00 in pre-petition arrearages. The IRS has filed a timely proof of claim in which it asserts \$37,716.45 in pre-petition arrearages. Debtor's plan provides that each of these claims will be paid by the sale of real property commonly known as 1410 Cherrywood Drive, Modesto, California, 95358 ("Property") within 90 days of confirmation of the plan. There is no pending Motion to Sell in Debtor's case. Moreover, Debtor's plan does not provide a date certain, nor sum certain to be paid into the plan. Since the value of the residence is undetermined until sold and there is no sale pending, the plan is speculative and is not feasible under 11 U.S.C. § 1325(a)(6). See *In re Gavia*, 24 B.R. 573, 574 (9th Cir. BAP 1982); see also *In re Colosi*, 2018 WL 2972342 at *6 (Bankr. D. N.J. June 8, 2018) ("In a situation where a debtor's ability to make payments under the proposed Chapter 13 plan relies on the refinancing of assets or the selling of properties, a court should deny confirmation when it considers the contingency too speculative."); *In re Werden*, 2000 WL 33679431 at *4 (Bankr. D. N.H. Feb. 8, 2000) ("Numerous courts have held that a Chapter 13 plan is not feasible when it envisions the sale or refinancing of significant property sometime in the future when such a sale or refinancing appears highly speculative.").

Similarly, Debtor's prior case, no. 16-90219, also proposed selling the Property to satisfy creditor claims. After more than a year of unreasonable delay after first proposing to sell the Property, the prior case was eventually dismissed due to Debtor's failure to file a Motion to Sell. Because of the Debtor's prior history and multiple misrepresentations regarding the sale of the Property in the prior case, the court does not believe the Debtor or her attorney (who is the same attorney who represented the Debtor in the referenced prior chapter 13 case) that in this case the Debtor intends to sell the Property. More specifically, the court believes that the Debtor's proposal to sell the Property is a delay tactic. Therefore, if the Property is to be sold to fund payments under a plan the Debtor shall have until **March 18, 2022**, to file, set, and serve a Motion to Sell or this case may be dismissed on the Chapter 13 Trustee's ex parte application.

Second, Debtor's plan may not pass the liquidation test of 11 U.S.C. § 1325(a)(4). Debtor's Schedule A/B lists the Property with a current value of \$312,000.00. The same Property was listed with a value of \$250,000.00 on the Schedule A/B filed in Debtor's prior case, no. 16-90219. Trustee has requested Debtor to provide written proof of the fair market value of the Property. Dkt. 49, p. 4. Without proof of the fair market value of the Property, it cannot be determined if Debtor's plan passes the liquidation test of 11 U.S.C. § 1325(a)(4).

Third, the Debtor has not provided the Trustee with a copy of an income tax return for

the 2018 tax year. Debtor admitted at her 341 meeting of creditors held on November 3, 2021 that her 2018 income tax returns were yet to be filed. Without the 2018 income tax return, it cannot be determined if Debtor's plan is feasible. 11 U.S.C. § 1325(a)(6).

The objection to confirmation filed by interested party Suzanne Conry is overruled as moot and the opposition is dismissed as moot, as the Trustee's opposition satisfactorily references sufficient grounds to deny confirmation of the amended plan.

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.

4. [21-90441](#)-B-13 SHARON HAMILTON MOTION FOR RELIEF FROM
[RLS](#)-1 David C. Johnston AUTOMATIC STAY
1-20-22 [[43](#)]

U.S. BANK TRUST NATIONAL
ASSOCIATION 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 22, 2022 at 1:00 p.m.**

U.S. Bank Trust National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 24150 & 24152 Highway 108, Twain Harte, California, 95383 (the "Property"). Movant has provided the Declaration of Tanya Ries to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Ries Declaration states that there are 4 post-petition payments in default totaling \$9,204.93.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$365,175.43 as stated in the Ries Declaration. Movant has not provided evidence pertaining to the Property's value. Additionally, Debtor claims she has sold the property involved in this loan "decades ago" and that lender agreed to allow buyers to assume loan. Dkt. 30, p. 4.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The Debtor's failure to make regular post-petition mortgage payments is cause for

relief from the automatic stay of 11 U.S.C. § 362(a) under § 362(d)(1). *Dangcil v. JP Morgan Chase Bank, N.A. (In re Dangcil)*, 2017 WL 1075045 at *8 (9th Cir. BAP March 21, 2017). It is also cause for relief from the co-debtor stay of § 1301. See *In Re Amey*, 314 B.R. 864, 867 (Bankr. N.D. Ga. 2004) (“[T]he Court concludes that Movant has shown cause for the lifting of the automatic and codebtor stays, and the Court will, therefore, terminate them pursuant to 11 U.S.C. § 362(d) and § 1301(c).”).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The request for relief from stay as to non-filing co-debtor Terry Hamilton, who is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

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.

Attorneys’ Fees Requested

Though requested in the motion, Movant has not stated either a contractual or statutory basis for the award of attorneys’ fees in connection with this motion. Movant is not awarded any attorneys’ fees.

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

The court will issue an order.

Conditional Nature of this Ruling

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, 18 2022, 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 22, 2022, 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 22, 2022, at 1:00 p.m.

5. [21-90442](#)-B-13 THOMAS GILLIS MOTION TO DISMISS CASE
 [UST](#)-3 Pro Se 1-14-22 [[47](#)]

Final Ruling

Motion denied by order from chambers filed on February 10, 2022. No appearance is required.

6. [21-90557](#)-B-13 DUANE SHUGART
[NLG](#)-1 Evan Livingstone
Thru #7

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK TRUST
NATIONAL ASSOCIATION
1-26-22 [[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). 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 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, objecting creditor U.S. Bank Trust National Association ("Creditor") holds a deed of trust secured by the Debtor's residence. The Creditor has filed a timely proof of claim in which it asserts \$14,079.44 in pre-petition arrearages. The plan proposes to cure \$7,000.00 in pre-petition arrears. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for full payment of the arrearage and maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Second, the Debtor does not appear to have the ability to fund the plan. Debtor's Schedule J indicates a monthly net income of \$288.83. Debtor's plan requires a contribution of all of Debtor's disposable income to be feasible. As discussed above, Debtor understates the pre-petition arrearages owed to Creditor, and would need to increase his plan payment by over \$117.99, which does not appear possible given Debtor's current monthly net income. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed November 29, 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.

7. [21-90557](#)-B-13 DUANE SHUGART
[RDG](#)-1 Evan Livingstone

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-21-22 [[15](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Trustee having filed a notice of dismissal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) 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.

8. [21-90158](#)-B-13 JILL MURPHY
[LBF](#)-1 Lauren Franzella

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH FCA US LLC
2-1-22 [[22](#)]

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, and may appear at the hearing to offer oral argument.

The court's decision is to continue the hearing on the motion to March 1, 2022, at 1:00 p.m.

Debtor requests that the court approve a compromise and settle competing claims and defenses with FCA US LLC ("FCA"). The claims and disputes to be resolved by the proposed settlement are related to a 2018 Dodge Ram ("Vehicle") which Debtor purchased from the dealership known as FCA. Debtor had experienced many issues with the Vehicle and consulted with a lemon law attorney in August, 2021 to consider her options. After months of communication, FCA has agreed to purchase the Vehicle back from the Debtor in exchange for the Debtor's release and discharge of FCA from all known and unknown claims, damages, costs, attorneys' fees, expense and loss of services related to the Vehicle. Additionally, Debtor will transfer possession of the Vehicle with clear title to FCA. The terms of the cash settlement reflect that Debtor will receive a net profit of \$22,841.00, in addition to attorney's fees included in the settlement totaling \$8,500.00. Debtor has filed amended schedules to disclose and exempt the proceeds from the sell back of the Vehicle. Once the settlement is received, Debtor intends to use the net proceeds to purchase a vehicle, and Debtor will file a motion to incur for the purchase at that time. The Chapter 13 Trustee has been made aware of the plan to sell back the Vehicle and the Debtor will file a modified plan prior to the February 15th meeting. Dkt. 22.

Debtor and FCA have resolved these claims and disputes, subject to approval by the court on terms and conditions summarized at dkt. 25.

Discussion

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Debtor has not argued that the four factors have been met.

Debtor does not reference the four factors in her motion, nor does she provide any analysis or conclusion that the factors are satisfied. Without alluding to, analyzing,

or referencing these factors, it cannot be determined whether the compromise meets Fed. R. Bankr. P. 9019(a) standards and should be approved, or conversely, that Fed. R. Bankr. P. 9019(a) is inapplicable.

Although a denial of the motion is warranted, in the interest of judicial economy and so that the Debtor is not punished for the attorney's sloppy work, the court will exercise its discretion to continue the hearing on the motion to approve the settlement agreement and provide the Debtor with an opportunity to address the above-referenced deficiency in a supplemental brief. The hearing will be CONTINUED to March 1, 2022, at 1:00 p.m. A supplemental brief shall be filed by February 22, 2022. Further, because these issues should have been addressed in the motion to approve the settlement agreement the court will not approve, and the Debtor's attorney shall not charge the Debtor, additional attorney's fees for the motion to approve the settlement agreement (and all related matters) or the supplemental brief. See 11 U.S.C. § 329(b).

The motion is ORDERED CONTINUED to March 1, 2022 at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

9. [19-90571](#)-B-13 LATONA BOWERS
[LBF](#)-8 Lauren Franzella

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH GRANT BISHOP
MOTORS, INC.
1-25-22 [[128](#)]

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, and may appear at the hearing to offer oral argument.

The court's decision is to continue the hearing on the motion to March 1, 2022, at 1:00 p.m.

Debtor requests that the court approve a compromise and settle competing claims and defenses with Mercedes Benz of Modesto ("Mercedes"). The claims and disputes to be resolved by the proposed settlement are related to tort claim filed by Debtor against Mercedes. Debtor brought the tort claim against Mercedes alleging (1) violation of California Civil Code §§ 51, 51.5, 51.7, 52; (2) violation of 15 U.S.C. § 1691, et seq.; (3) infliction of emotional distress; and (4) unfair business practices. Debtor and Mercedes have agreed to a settlement wherein Debtor will receive \$66,500.00 in full satisfaction of all claims Debtor may have for alleged economic and non-economic damages. The terms of the settlement reflect that Debtor will receive net proceeds of \$49,583.48, in addition to attorney's fees included in the settlement totaling \$16,525.00, and costs incurred in the amount of \$291.52. Debtor's plan provides that she turn over non-exempt proceeds to the Trustee in order to pay 100% to all creditors. Debtor's attorney in her civil case will write a check to the Trustee. Any proceeds beyond the amount sufficient to satisfy creditors' claims will be issued to Debtor. The Trustee has filed a statement of non-opposition to Debtor's motion at dkt. 133.

Debtor and Mercedes have resolved these claims and disputes, subject to approval by the court on terms and conditions summarized at dkt. 131.

Discussion

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Debtor has not argued that the four factors have been met.

Debtor does not reference the four factors in her motion, nor does she provide any analysis or conclusion that the factors are satisfied. Without alluding to, analyzing,

or referencing these factors, it cannot be determined whether the compromise meets Fed. R. Bankr. P. 9019(a) standards and should be approved, or conversely, that Fed. R. Bankr. P. 9019(a) is inapplicable.

Although a denial of the motion is warranted, in the interest of judicial economy and so that the Debtor is not punished for the attorney's sloppy work, the court will exercise its discretion to continue the hearing on the motion to approve the settlement agreement and provide the Debtor with an opportunity to address the above-referenced deficiency in a supplemental brief. The hearing will be CONTINUED to March 1, 2022, at 1:00 p.m. A supplemental brief shall be filed by February 22, 2022. Further, because these issues should have been addressed in the motion to approve the settlement agreement the court will not approve, and the Debtor's attorney shall not charge the Debtor, additional attorney's fees for the motion to approve the settlement agreement (and all related matters) or the supplemental brief. See 11 U.S.C. § 329(b).

The motion is ORDERED CONTINUED to March 1, 2022 at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

10. [21-90579](#)-B-13 MATTHEW/CELESTE JAMISON OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Jessica A. Dorn PLAN BY RUSSELL D. GREER
1-21-22 [[19](#)]

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 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.

PMGI Financial LLC ("Creditor") has filed a proof of claim listing a secured portion of \$4,976.69, however Debtors' plan does not provide for this secured claim. Dkt. 3. Without providing for this claim, it cannot be determined whether Debtors intend to pay this creditor and, if it is to be paid, how it is to be paid. This impacts whether Debtors will be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6).

The plan filed December 3, 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.

11. [18-90792](#)-B-13 BRIAN BERGMANN-CARLSON MOTION TO APPROVE LOAN
[MMS](#)-2 AND JENNIFER CARLSON MODIFICATION
Matthew M. Spielberg 1-10-22 [[43](#)]

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 permit the loan modification.

Brian Bergmann-Carlson and Jennifer Carlson ("Debtors") move for an order authorizing a Loan Modification with Promissory Note and Subordinate Deed of Trust ("Agreement") regarding the real property generally described as 15100 Mountain Lily Road, Sonora, California 95370. Debtors were in default with Freedom Mortgage Corporation ("Creditor") in the amount of \$12,888.64 and sought to cure this by entering into a Promissory Note and Subordinate Deed of Trust with the Secretary of Housing and Urban Development ("HUD"). HUD advanced funds in the amount of \$12,888.64 on behalf of the Debtors by curing the default on the loan with Creditor. The Promissory Note will be held by the HUD, bears no interest, and shall be subordinate to the first deed of trust.

The motion is supported by the Declaration of Brian Bergmann-Carlson. Debtors will repay the funds back to HUD pursuant to the terms of the Promissory Note. Dkt. 45, p. 3. All terms under the existing note and deed of trust between Debtors and Creditor were not modified. Thus, the principal and interest payment amounts, interest rate, maturity date, etc. remain the same. Currently, the monthly payment is \$2,138.82.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

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

The court will issue an order.

12. [21-90496](#)-B-13 SUZANNE NIETO MOTION TO CONFIRM PLAN
[MMS](#)-2 Matthew M. Spielberg 1-6-22 [[30](#)]

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 confirm the first amended plan.

The Chapter 13 Trustee having filed a notice of dismissal of its opposition, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) (when opposing party has not yet served an answer) or 41(a)(2) (dismissal at the plaintiff's request only by court order, on terms that the court considers proper) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed December 2, 2021, will be confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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.