

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: March 1, 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
Sacramento, California

March 1, 2022 at 1:00 p.m.

1. [21-23825](#)-B-13 ANGELINA/MIGUEL PEINADO MOTION TO RECONSIDER ORDER
 [ELP](#)-2 Michael M. Noble DENYING MOTION FOR RELIEF FROM
 THE AUTOMATIC STAY
 1-28-22 [[55](#)]

Resolved by order from chambers filed on February 25, 2022. No appearance at the March 1, 2022, hearing is required.

2. [21-24236](#)-B-13 JONATHAN LA VINE
[RDG](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
2-4-22 [[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). 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, the Debtor did not appear at the meeting of creditors set for February 2, 2022, and the continued meeting of creditors set for February 16, 2022, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor does not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

Third, the plan may not be Debtor's best effort under 11 U.S.C. § 1325(b). Debtor's Schedule J indicates net disposable income of \$238.11, yet Debtor has proposed a plan payment of only \$180.00. Accordingly, Debtor is not paying all available income into the plan and the plan is not proposed in good faith. 11 U.S.C. §1325(a)(3).

Fourth, Debtor has included in Schedule I a monthly deduction of \$125.00 for 401K contributions. This expense is not reasonably necessary to be expended for the maintenance or support of the debtors or a dependent of the debtors. Accordingly, Debtor's plan is not proposed in good faith. 11 U.S.C. §1325(a)(3).

Fifth, the Debtor has failed to provide evidence that the plan is feasible. Debtor's plan fails to indicate the percentage to be paid to general unsecured creditors. 11 U.S.C. § 1325(a)(6).

Sixth, the Debtor seek to classify the car loan with Automotive Credit Corp. ("ACC") as a Class 4 claim. Class 4 claims are not in default. The Plan provides for pre-petition arrears owed to Automotive Credit Corp in the amount of \$1,500.00 to be paid through the Plan at 6.25% interest a monthly dividend of \$50.00

The plan filed December 12, 2022, 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.

3. [21-23263](#)-B-13 MONIQUE COLLINS OBJECTION TO CLAIM OF ERIN
[SDW](#)-3 Selwyn D. Whitehead LANGES, ADMINISTRATOR OF THE
ESTATE OF LANGES, CLAIM NUMBER
5
1-21-22 [[58](#)]

CONTINUED TO 3/22/22 AT 1:00 P.M. PER SCHEDULING ORDER ENTERED 2/15/22.

Final Ruling

No appearance at the March 1, 2022, hearing is required. The court will enter a minute order.

4. [21-23068](#)-B-13 SAUL/MARIA CABRALES MOTION TO CONFIRM PLAN
[JCK](#)-3 Gregory J. Smith 1-10-22 [[75](#)]

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 Debtors have 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 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.

5. [19-21273](#)-B-13 LUKE LACASSE
[GSJ](#)-1 Grace S. Johnson

MOTION TO MODIFY PLAN
1-5-22 [[42](#)]

Final Ruling

The motion has 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 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 permit the requested modification and not confirm the modified plan.

First, Debtor has failed to provide evidence that the plan is mathematically feasible. Section 7 of Debtor's plan states that the plan shall pay \$35,732.57, which is 77% to Debtor's general unsecured creditors. However, Trustee's records indicate a total of \$162,419.99 nonpriority unsecured claims were filed in Debtor's case. Consequently, \$35,732.57 would yield 22% to Debtor's unsecured creditors. If Debtor wishes to provide 77% to nonpriority general unsecured creditors, Debtor's plan would have to provide approximately \$125,063.39 to these filed claims. 11 U.S.C. § 1325(a)(6).

Second, the Debtor has failed to provide evidence that the plan is mathematically feasible. The plan provides a monthly payment of \$1,705.00 and a 77% dividend to general unsecured creditors. Based on the claims that have been filed to date, the Debtor's monthly plan payment will need to be at least \$1,817.00 in order for the plan to be feasible as proposed paying unsecured creditors 22%, or, alternatively, Debtor's monthly plan payment will need to be at least \$5,441.00 in order for the plan to be feasible as proposed paying unsecured creditors 77%. 11 U.S.C. § 1325(a)(6).

Third, Debtor's plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtor's supplemental Schedule J lists a monthly expense of \$150.00 for taxes owed to the Internal Revenue Service. Without supporting documentation, Debtor's total tax debt, how long payments will continue, and whether Debtor anticipates owing taxes in subsequent tax years cannot be determined.

Fourth, the Debtor is delinquent in the amount of \$6,556.00. Debtor's motion and declarations are silent as to why Debtor is delinquent in making plan payments, and without knowing the reasons for the delinquency, it cannot be determined if what caused the delinquency has been rectified. 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).

The modified plan does not comply 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 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 deny as unnecessary the motion to employ.

Debtor seeks to employ Aldair Lima of PMZ Real Estate pursuant to 11 U.S.C. § 327(a). The Debtor argues that Lima's appointment and retention is necessary to assist the Debtor in marketing and in the sale of the real property located at 2459 Felino Lane, Lodi, California, 95240.

Aldair Lima testifies that he has performed an analysis of the fair market value for the property located at 2459 Felino Lane, Lodi, California, 95240, and believes the fair market value for the property is \$475,000.00. He further testifies that he has prepared a listing agreement for the property, based on the fair market value. Aldair Lima testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Discussion

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Some courts hold that § 327 applies to the employment of professionals by chapter 13 trustees and chapter 13 debtors. See e.g., *Wright v. Csabi (In re Wright)*, 578 B.R. 570 (Bankr. S.D. Tex. 2017) (§ 327(e)); *In re Goines*, 465 B.R. 704 (Bankr. N.D. Ga. 2012) (§ 327(e)); *In re Jenkins*, 406 B.R. 817 (Bankr. N.D. Ind. 2009) ("the term 'trustee' in 11 U.S.C. § 327(e) is to be read as 'Chapter 13 debtor'").

However, a majority of courts hold that § 327 applies only when chapter 13 trustees seek to employ professionals and it is inapplicable to the employment of professionals by chapter 13 debtors. See e.g., *In re Blume*, 591 B.R. 675 (Bankr. E.D. Mich. 2018) (chapter 13 debtors were not required to seek bankruptcy court's approval to employ special counsel under § 327(e) to represent debtors in pending state court litigation); *In re Gilliam*, 582 B.R. 459, 465-66 (Bankr. N.D. Ill. 2018) (§ 327 does not apply to chapter 13 debtors); *In re Scott*, 531 B.R. 640, 644-45 (Bankr. N.D. Miss. 2015) (nothing suggests that "trustee" in § 327(e) means debtor); *In re Jones*, 505 B.R. 229, 231 (Bankr. E.D. Wis. 2014) ("[A]n individual chapter 13 debtor ... is not a 'trustee' for purposes of § 327."); *In re Maldonado*, 483 B.R. 326, 330 (Bankr. N.D. Ill. 2012) (§ 327 does not apply to debtors in Chapter 13 cases); *In re Tirado*, 329 B.R. 244, 250 (Bankr. E.D. Wis. 2005) ("Therefore, § 327 of the Bankruptcy Code simply does not apply to Chapter 13 debtors who seek to employ professionals.").

The majority consider the limitation of § 327 to a "trustee" and the omission of reference to Chapter 13 debtors significant. As the court in *Tirado* explained:

[Section] 327 does not apply to the employment of attorneys or other professionals by a chapter 13

debtor. Section 327 applies to trustees, and, pursuant to § 1107 of the Bankruptcy Code, when § 327 refers to the trustee, the reference includes the debtor in possession. [Internal citation omitted].

Each subsection of § 327 either focuses on the trustee or excludes chapter 13. See 11 U.S.C. §§ 327(a) ("the trustee ... may employ ..."); 327(b) ("the trustee may retain or replace ..."); 327(c) ("In a case under chapter 7, 12, or 11 of this title ..."); 327(d) ("the court may authorize the trustee to act as attorney or accountant"); 327(e) ("The trustee ... may employ ..."); and 327(f) ("The trustee may not employ ..."). Congress, through the use of plain and unambiguous language, has limited the scope of § 327 to trustees. Although chapter 11 debtors in possession have also been included under § 327 via § 1107, and chapter 12 debtors must comply with § 327 pursuant to § 1203, there is no corresponding section of chapter 13 making § 327 applicable to chapter 13 debtors.

Therefore, § 327 of the Bankruptcy Code simply does not apply to chapter 13 debtors who seek to employ professionals. The requirements of § 327 would be triggered by a chapter 13 trustee's application to employ a professional, but in this case, [the professional's] services were rendered to the Debtor, not the Trustee. For, unlike chapter 11 and 12 in which the debtor in possession has the same rights and duties when selling property and employing professionals as a trustee, "the [chapter 13] debtor shall have, *exclusive of the trustee*, the rights and powers of a trustee [to use, sell, or lease property]." 11 U.S.C. § 1303 (emphasis supplied).

Tirado, 329 B.R. at 250 (emphasis in original).

This court has previously followed the majority and found that § 327 is inapplicable to a chapter 13 debtor's employment of professionals. *See e.g., In re Slagle*, Case No. 18-27555 (Dkts. 49, 52); *In re Fonseca*, Case No. 16-28212 (Dkts. 42, 43). In so doing, the court applied *Tirado's* reasoning. It does so here as well.

The court finds *Tirado's* reasoning and the majority position to be the better and better reasoned approach. Accordingly, the court concludes that it is not necessary for the Debtor's realtor's retention to be approved under § 327 in order to permit the realtor to provide services to the Debtor.

Conclusion

For the foregoing reasons, the Debtor's request to employ a real estate agent under § 327 will be denied as unnecessary and therefore moot.

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

The court will issue an order.

7. [21-23220](#)-B-13 HARDEEP SINGH CONTINUED MOTION TO DISMISS
[RDG](#)-2 David C. Johnston CASE
2-8-22 [[32](#)]

Final Ruling

Based on the Declaration of David C. Johnston Re Inability to File Opposition to Trustee's Motion dated February 28, 2022, this matter is **continued to March 15, 2022, at 1:00 p.m.** The debtor shall have until March 8, 2022, to file, set, and serve an amended plan. If an amended plan is timely filed, set, and served the motion to dismiss will be denied without further hearing and the hearing on March 15, 2022, at 1:00 p.m. will be vacated.

The court will issue an order.

8. [21-23226](#)-B-13 ALICIA YASSIN CONTINUED MOTION TO DISMISS
[RDG](#)-2 David C. Johnston CASE
2-1-22 [[41](#)]

Final Ruling

This matter was continued from February 22, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 25, 2022. Therefore, the court's conditional ruling at dkt. 45, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on March 1, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

9. [21-23531](#)-B-13 DIANA QUIROGA CONTINUED MOTION TO DISMISS
[RDG](#)-1 Richard L. Jare CASE
2-8-22 [[40](#)]

Final Ruling

This matter was continued from February 22, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 25, 2022. Debtor filed a timely response and a first modified plan with a scheduled confirmation hearing date of April 5, 2022, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 50 and the continued hearing on March 1, 2022, 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.

10. [19-23738](#)-B-13 WILLIAM BURGESS CONTINUED MOTION TO DISMISS
[RDG](#)-3 David C. Johnston CASE
2-7-22 [[84](#)]

Final Ruling

This matter was continued from February 22, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 25, 2022. Therefore, the court's conditional ruling at dkt. 90, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on March 1, 2022, 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. [21-20770](#)-B-13 ANGELAS ASHLEY CONTINUED MOTION TO DISMISS
[RDG](#)-3 Jennifer G. Lee CASE
2-8-22 [[78](#)]

Final Ruling

This matter was continued from February 22, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 25, 2022. Debtor filed a timely response and a first modified plan with a scheduled confirmation hearing date of April 5, 2022, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 89 and the continued hearing on March 1, 2022, 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.