

**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: March 7, 2023

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

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

March 7, 2023 at 1:00 p.m.

1. [21-90527](#)-B-13 CHRISTINE COLE MOTION FOR SANCTIONS FOR
[BSH](#)-4 Brian S. Haddix VIOLATION OF THE AUTOMATIC STAY
1-31-23 [[69](#)]

Final Ruling

An order was entered continuing this motion to April 11, 2023, at 1:00 p.m. Dkt. 80. No appearance at the March 7, 2023, hearing is required.

2. [22-90353](#)-B-13 KELLY SEARS
[JCW](#)-1 David C. Johnston

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-27-23 [[35](#)]

AMERICAN HONDA FINANCE
CORPORATION VS.

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 motion for relief from automatic stay will be continued and set for an evidentiary hearing as stated below.

American Honda Finance ("Creditor") moves for relief from automatic stay as to a leased 2019 Honda Accord Sedan LX ("Vehicle"). Creditor states that the lease expired on November 23, 2022.

Debtor Kelly Sears ("Debtor") contends that after she filed for bankruptcy on September 29, 2022, she requested and was granted a 1-year extension of the lease. Debtor has timely made all lease payments but the December 2022 and January 2023 payments were returned by Creditor, who refused to accept them. Debtor states that the Vehicle is necessary for her reorganization because she needs it to drive to work.

Creditor contends that Debtor did request the 1-year lease extension in August 2022, before she filed bankruptcy, and was sent the paperwork on August 19, 2022. However, according to the Creditor, the Debtor did not timely return the paperwork to Creditor until post-petition on October 25, 2022. Creditor asserts that because of the bankruptcy filing, it can no longer process the lease extension.

It appears that Debtor and Creditor disagree as to (1) when the lease extension paperwork was requested (either pre- or post-petition), (2) when the paperwork was received by Creditor (either pre- or post-petition), and (3) whether the lease extension was even approved. Neither Debtor nor Creditor have submitted as evidence the 1-year lease extension paperwork or its approval.

Based on the number of factual disputes and inconsistencies, the court will ORDER as follows:

(1) the hearing on March 7, 2023, at 1:00 p.m. is continued for an evidentiary hearing to be held on Monday, April 3, 2023, at 10:00 a.m. See 11 U.S.C. § 363(e). Direct testimony declarations are mandatory and no witness will be permitted to provide live testimony without one.

(2) direct testimony declarations and exhibits will be exchanged and delivered to the court (not filed) by Monday, March 27, 2023. Evidentiary objections will be exchanged and delivered to the court (not filed) by Wednesday, March 29, 2023. Objections not made are deemed waived.

(3) the evidentiary hearing will be held in the Sacramento Courtroom, Courtroom 32, located at 501 I Street, Sacramento, California, 95814. All attorneys, parties, and witnesses shall be present in person for the evidentiary hearing. No telephonic or video appearances are permitted.

(4) the automatic stay is modified for the sole purpose of allowing Creditor to process any appropriate lease extension and to accept payments Creditor apparently returned in resolution of the current dispute. Creditor shall take no further action, repossession in particular, pending conclusion of the evidentiary hearing and without further order of the court. Except as modified herein, the automatic stay shall remain in effect

pending further order of the court.

The motion is ORDERED CONTINUED AND SET FOR AN EVIDENTIARY HEARING as stated in the minutes.

The court will issue an order substantially in the above form.

3. [22-90469](#)-B-13 PEDRO BECERRA OBJECTION TO CONFIRMATION OF
 [RDG](#)-1 David C. Johnston PLAN BY RUSSELL D. GREER
 2-13-23 [[23](#)]

CONTINUED TO 3/14/23 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED
MEETING OF CREDITORS SET FOR 3/08/23.

Final Ruling

No appearance at the March 7, 2023, hearing is required. The court will issue an
order.

4. [20-90371](#)-B-13 GABRIEL/CHRISTINE AGUE MOTION TO MODIFY PLAN
[JCK](#)-6 Gregory J. Smith 1-31-23 [[44](#)]

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.

5. [22-90471](#)-B-13 KATHLEEN CLINE
[RDG](#)-1 Charles L. Hastings

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
2-13-23 [[13](#)]

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.

All objections have been resolved and the court has determined that oral argument is not necessary. See Local Bankr. R. 1001-1(f), 9014-1(h). This matter will be decided on the papers. No appearance at the hearing is necessary.

The court's decision is to overrule the objection and confirm the plan.

The Chapter 13 Trustee has filed an objection to confirmation and the debtor Kathleen Cline ("Debtor") filed a response. The issue regarding providing state and federal income tax returns each year to the Trustee appears to have been resolved since the Debtor has agreed to do so.

The issue regarding the amount of available disposable income to pay general unsecured creditors is explained by the Debtor in her response. The Trustee's objection states that Form 122C-2 shows a monthly disposable income of \$1,437.56 per month and would result in a 75.96% dividend to Debtor's general unsecured creditors. Debtor's plan, however, provides only 34% distribution to general unsecured creditors.

Debtor's declaration explains that she has tried very hard reducing her expenses but cannot meet the \$1,437.56 per month amount since her rent is \$1,650 per month (greater than the IRS Local Standards housing allowance of \$1,279 per month), her utilities are approximately \$800 per month (greater than the IRS Local Standards utilities allowance of \$609 per month) since the home she is renting uses propane for heating rather than the less expensive natural gas, and her vehicle operation expenses are \$400 per month (rather than the IRS Local Standards vehicle operation expense of \$285 per month). Debtor has tried to look for less expensive rent in her area but has not been able to locate any. The effect of just the three items on Form 122C-1 is that the Debtor's expenses are \$687 in excess of the allowances provided in Form 122C-1.

The court finds that the Debtor has satisfactorily explained why her monthly disposable income cannot be increased. Given the unique circumstances stated above, the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed December 21, 2022, is confirmed.

The objection is ORDERED OVERRULED 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.

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 deny without prejudice the motion for hardship discharge.

Debtors' counsel Rabin Pournazarian ("Movant") requests an order granting a hardship discharge pursuant to 11 U.S.C. § 1328(b). Movant states that both debtors Ronald Gobbell and Rosetta Gobbell ("Debtors") are deceased. Mrs. Gobbell passed away on September 25, 2022, and Mr. Gobbell passed away on November 24, 2022. Movant states that given Debtors' deaths, it is not possible to complete plan payments

The Chapter 13 Trustee filed a response stating that the motion does not substitute a representative for Debtors. Accordingly, the Trustee questions whose interests Movant is representing in this instant motion since his clients are both deceased. The court agrees with the Trustee.

Therefore, the request for discharge pursuant to 11 U.S.C. § 1328(b) is denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

7. [22-90289](#)-B-13 CORY BRITTON
[PGM](#)-1 Peter G. Macaluso

MOTION TO CONFIRM PLAN
1-18-23 [[45](#)]

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.

The Chapter 13 Trustee has filed an objection to confirmation and the debtor Cory Britton ("Debtor") filed a response. Some issues appear to have been resolved including Debtor filing an amended Statement of Financial Affairs, willingness to increase plan payments to meet the best efforts requirement, and acknowledgment that state and federal income tax returns are to be provided to the Trustee each year during the pendency of this case.

However, it is unclear whether the Debtor will be able to make the proposed plan payment to render the plan feasible pursuant to 11 U.S.C. § 1325(a)(6). The Trustee states, and the Debtor acknowledges, that Debtor's income appears insufficient and that he estimates a reduction in expenses and financial assistance from his significant other. However, no declaration has been filed by Debtor's significant other stating her ability and willingness to provide financial support. Therefore, the plan cannot be confirmed.

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.

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 to sell and continue the matter to March 14, 2023, at 1:00 p.m.**

The Bankruptcy Code permits the Chapter 13 debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor propose to sell the property described as 2605 Parkdale Drive, Modesto, California ("Property").

Proposed purchaser Cynthia Doris Sullivan has agreed to purchase the Property for \$238,000.00. Property is encumbered by a lien from PennyMac Loan Services, LLC in the amount of \$138,183.82. The sale of the Property will pay off the plan in full with a 100% dividend to general unsecured creditors. After all fees are paid, an estimated balance of \$32,945.35 will be paid to the Debtor.

The Trustee has filed a response and, while not opposing the motion, requests that the following provisions be included in the order approving the sale of real property:

1. The sale is approved provided all liens, if any, are paid in full in a manner consistent with the plan, notwithstanding relief of stay that has been entered.
2. The Trustee shall approve the escrow and title company to be used in connection with the transaction.
3. The Trustee shall approve the estimated closing statement to be prepared in connection with the sale, and when approved, disbursement may only be made in accordance with the approved estimated closing statement.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate. The motion is conditionally granted.

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, March 10, 2023, to file and serve an opposition or other response to the motion. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor 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 March 14, 2023, 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 March 14, 2023, at 1:00 p.m.

9. [22-90395](#)-B-13 DANIELLE SCAPARRO PALM MOTION TO CONFIRM PLAN
[TMO](#)-2 T. Mark O'Toole 1-20-23 [[42](#)]

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 Debtor has 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 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. [22-90201](#)-B-13 BALJEET SINGH
[RDG](#)-1 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
2-10-23 [[43](#)]

Final Ruling

This matter was continued from February 28, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 47, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on March 7, 2023, 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. [22-90223](#)-B-13 ALEO PONTILLO
[RDG](#)-3 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
2-10-23 [[47](#)]

Final Ruling

This matter was continued from February 28, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 3, 2023. Debtor filed a timely response and a second amended plan with a scheduled confirmation hearing date of April 18, 2023, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 51 and the continued hearing on March 7, 2023, 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.

12. [22-90428](#)-B-13 MERCEDES HERENAS
[RDG](#)-2 Pro Se

CONTINUED MOTION TO DISMISS
CASE
2-10-23 [[35](#)]

Final Ruling

This matter was continued from February 28, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 39, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on March 7, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dkt. 39.

The court will issue an order.

13. [22-90259](#)-B-13 MARTHA MARTIN
[RDG](#)-2 T. Mark O'Toole

CONTINUED MOTION TO DISMISS
CASE
2-10-23 [[53](#)]

Final Ruling

This matter was continued from February 28, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 57, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on March 7, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dkt. 57.

The court will issue an order.

14. [22-90279](#)-B-13 DEBORAH KIRKLE
[RDG](#)-1 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
2-10-23 [[44](#)]

Final Ruling

This matter was continued from February 28, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 48, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on March 7, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dkt. 48.

The court will issue an order.