

**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 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  
Sacramento, California

**March 8, 2022 at 1:00 p.m.**

---

1. [20-25200](#)-B-13    DAVIE HUMPHREY    MOTION TO MODIFY PLAN  
[MEV](#)-3    Marc Voisenat    1-12-22 [[50](#)]

**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's plan provides for arrears due to Nationstar Mortgage/SN Servicing Corporation to be paid a monthly dividend of \$746.33 beginning February 2022. As of February 2022, the balance of the arrears owed to Nationstar Mortgage/SN Servicing Corporation totals \$36,138.85 and there are 46 months remaining in the plan term. The monthly dividend proposed to cure the Nationstar Mortgage/SN Servicing Corporation claim will take 49 months to pay said claim. Accordingly, the plan will take approximately 63 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the plan payment in the average monthly amount of \$2,701.76 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of these average monthly amounts plus Trustee's fees is \$2,753.12. The plan does not comply with Section 5.02 of the mandatory form plan.

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.

**March 8, 2022 at 1:00 p.m.**

### **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 Debtors' initial plan.

First, the Debtors have failed to provide evidence that the plan is mathematically feasible. The plan provides a monthly payment of \$960.00 and a 0% dividend to general unsecured creditors. Based on the claims that have been filed to date, the Debtors' monthly plan payment will need to be at least \$1,067.00 in order for the plan to be feasible as proposed paying unsecured creditors 0%. 11 U.S.C. § 1325(a)(6).

Second, the Debtors have failed to provide evidence that the plan is mathematically feasible. The plan provides for Santander Consumer as a Class 2 claim in the amount of \$22,828.95 to be paid at 2% interest a monthly dividend of \$400.14. However, Santander Consumer has filed a secured claim in the amount of \$23,965.15. Accordingly, the plan will take approximately 63 months to pay this claim, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). In order to complete the plan within the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d), the plan will require a minimum monthly dividend of \$420.06 to pay the claim at 2% interest.

Third, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows that the Debtor's monthly disposable income is \$258.01 for 60 months or \$15,480.60 which would result in a 17% dividend to the general unsecured creditors. The Debtors' provides for a 0% distribution to general unsecured creditors.

Fourth, Debtors' plan includes a deduction for optional telephone and telephone services in the amount of \$710.00. This expense is not reasonably necessary to be expended for the maintenance or support of the debtors or a dependent of the debtors, and, accordingly, is inappropriate. Unless Debtors' plan provides for the payment of this additional projected disposable income to Debtors' general unsecured creditors, the plan fails to comply with 11 U.S.C. § 1325(b).

Fifth, the Debtors have not provided the Trustee with a detailed month by month analysis of how Debtor Emelda Clymer's gross monthly income was computed. Debtors' plan lists her monthly income as \$6,099.33. Debtors' provided pay stubs to Trustee for Ms. Clymer from February 12, 2021 through July 30, 2021 showing gross income of \$41,266.84, or approximately \$6,877.81 per month. Until Trustee receives this detailed month by month analysis, it cannot be determined whether the plan provides all of the Debtors' projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Sixth, the Debtors have not provided the Trustee with a detailed month by month analysis of how Debtor Steven Clymer's gross monthly income was computed. Debtors' plan lists his monthly income as \$4,762.42. Debtors' provided pay stubs to Trustee for Mr. Clymer from February 5, 2021 through July 23, 2021 showing gross income of \$29,865.15, or approximately \$4,977.53 per month. Until Trustee receives this detailed month by

month analysis, it cannot be determined whether the plan provides all of the Debtors' projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Seventh, the Debtors' plan is not proposed in good faith under 11 U.S.C. §1325(a)(3). Debtors' Schedule J includes a monthly expense of \$103.75 for work uniforms. Debtor admitted at the 341 meeting of creditors that this is an expense incurred twice per year, and not monthly. 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).

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.

3. [19-25927](#)-B-13 TOBIAS GOMEZ  
[RK-4](#) Richard Kwun

MOTION TO VALUE COLLATERAL OF  
JP MORGAN CHASE BANK, NA  
2-5-22 [[112](#)]

### **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 value the secured claim of JP Morgan Chase Bank, NA at \$3,100.00.

Debtor moves to value the secured claim of JP Morgan Chase Bank, NA ("Creditor"). Debtor is the owner of a 2012 Mazda 3 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$3,100.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 6-1 filed by JP Morgan Chase Bank, NA is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred on April 26, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$7,538.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$3,100.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will issue an order.

4. [21-23653](#)-B-13 ROBERT VALENTINE AND MOTION TO INCUR DEBT  
[RWF](#)-1 TERRY ENGELHARDT 1-26-22 [[19](#)]  
**Thru #5** Robert W. Fong

**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.

Debtors seek court approval to incur post-petition credit. LoanCare, LLC ("Creditor"), whose claim the plan provides for in Class 1, has agreed to a loan modification that will reduce Debtors' mortgage payment from the current \$1,141.89 a month to \$571.77 a month. The modification will reduce Debtors' monthly payment on a trial basis, which may become a permanent loan modification contingent on Debtors satisfying the terms of the modification. In addition to reducing the overall monthly payment, the modification will reduce the interest rate, and increase the term of the loan.

The motion is supported by the Declaration of Robert Valentine and Terry Engelhardt. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms.

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.

5. [21-23653](#)-B-13 ROBERT VALENTINE AND MOTION TO MODIFY PLAN  
[RWF](#)-1 TERRY ENGELHARDT 1-26-22 [[26](#)]  
Robert W. Fong

**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, The Additional Provisions of Debtors' plan were filed separately at dkt. 30. Trustee is unable to retroactively administer this provision of Debtors' plan as these

creditors have already received disbursements in January 2022. Trustee's records indicate that through January 2022, a total of \$4,083.59 has been paid to LoanCare, LLC for the Class 1 post-petition monthly payment.

Second, Debtors' plan is not be feasible under 11 U.S.C. §1325(a)(6). Section 3.01 of Debtors' plan provides that a claim will not be paid pursuant to this plan unless a proof of claim is filed by or on behalf of a creditor, including a secured creditor. Debtors' plan provides for Mono County as a Class 2 creditor with a secured claim amount of \$1,869.45, to be paid a dividend of \$105.00 per month, at 6% interest. However, as of February 17, 2022, a claim from this creditor has not been filed pursuant to 11 U.S.C. §1305. Accordingly, Trustee is unable to administer this provision of Debtor's plan.

Third, Debtors' Motion to Modify and Confirm First Amended Chapter 13 Plan, dkt. 26, and Debtors' Motion to Incur Debt, dkt. 19, both utilize docket control number RWF-1. Debtor has failed to comply with LBR 9014-1(c)(3).

Debtors' attorney apparently needs to be reminded that, as this court has stated on numerous occasions, the confirmation hearing and the confirmation order are not the time or place to "fix" defects in the confirmation process such as deeming the separately-filed additional provisions document part of the plan when it obviously is not, paying a claim for which there is no proof of claim filed but for which the Debtors "intend" to file a claim a proof of claim, and re-designating a docket control number. Fortunately, however, denial of confirmation is without prejudice which means the Debtors and their attorney will have an opportunity to cure all these defects in a newly-filed, set, and served plan and motion to confirm it.

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.

6. [20-20071](#)-B-13 KIM WALKER  
[RLS](#)-1 Rabin J. Pournazarian

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-14-22 [[89](#)]

WELLS FARGO BANK, N.A. VS.

**Final Ruling**

The Movant and Debtor having filed a stipulation at dkt. 98, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

The court will issue an order.



7. [19-23989](#)-B-13 WILLIAM/ELVIRA VARQUEZ MOTION TO MODIFY PLAN  
[HWW](#)-8 Hank W. Walth 1-31-22 [[94](#)]

### **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 permit the requested modification and confirm the modified plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that the Debtors have not filed supplemental Schedules I and/or J to support their proposed plan payment.

The Debtors filed a response stating that they have filed amended Schedules I and J, which evidence their ability to make the proposed plan payment. The amended schedules were filed on February 23, 2022, dkt. 106.

The modified 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.