

**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 21, 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.

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Modesto, California

**March 21, 2023 at 1:00 p.m.**

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1. <a href="#"><u>23-90006</u></a> -B-13    MARK FREEBORN <a href="#"><u>RDG</u></a> -1                Simran Singh Hundal	OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE RUSSELL D. GREER 2-27-23    [ <a href="#"><u>26</u></a> ]
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**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 plan is not feasible. 11 U.S.C. § 1325(a)(6). Debtor's monthly payment with the Chapter 13 Trustee's compensation and expense totals \$1,700.10 per month. Debtor's plan payment is only \$918.00 per month in months 1 and 2. Therefore, the plan is not feasible.

Second, Les Schwab Tire Center has filed Claim No. 6-1 listing a secured portion of \$1,167.46. Debtor's plan does not provide for this claim. It is unclear whether Debtor intends to pay this creditor and its claim. Whether and how this creditor is to be paid will impact whether Debtor 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 January 9, 2023, 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.

**March 21, 2023 at 1:00 p.m.**

### **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.

The court has reviewed the Plan, objection, response, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket and the claims register. See Fed. R. Evid. 201(c)(1). Oral argument is not necessary and will not assist in the decision-making process. See Local Bankr. R. 1001-1(c).

The court's decision is to sustain the objection without prejudice to Debtor's ability to re-file another plan and the Plan will not be confirmed.

Before the court is an *Objection to Confirmation of Chapter 13 Plan* filed by secured creditor Scenic Oaks Funding, LLC ("Creditor"). See dkt. 16. Creditor objects to confirmation of the Chapter 13 Plan that Debtor Maria Navarro ("Debtor") filed on January 10, 2023 ("Plan"). See dkt. 3. Debtor filed a response to Creditor's objection. See dkt. 22.

As an initial matter, Debtor's objection to Creditor's service of the objection - and the lack of a local rule-required proof of service - will be overruled. Although the certificate of service associated with Creditor's objection fails to comply with the mandatory form required under the court's local rules, see e.g., Local Bankr. R. 7005-1, Debtor obviously received the objection because she responded to it. Consequently, Debtor is not prejudiced by Creditor's defective proof of service. That said, Creditor is advised that any future certificate(s) of service that fail(s) to comply with the applicable local rule may result in the document to which the certificate of service relates being stricken.

Creditor's objection to confirmation of the Plan on the basis it does not provide for its claim in full under Class 2 will be sustained. Creditor filed a secured proof of claim on February 28, 2023. See Claim No. 4-1. According to the proof of claim, the entirety of Creditor's claim was due on the Chapter 13 petition date. Debtor has not objected to the proof claim which means the claim asserted in the proof of claim is deemed allowed, 11 U.S.C. § 502(a), and it is presumptively valid as to its characterization and amount. See Fed. R. Bankr. P. 3001(f). The unobjected to proof of claim also governs plan treatment of Creditor's claim. See dkt. 3 at § 3.02. As such, it requires classification of Creditor's claim under Class 2 and not Class 1 as currently proposed in the Plan. Based on Debtor's mis-classification and Creditor's objection on the basis its claim is not paid in full under Class 2, the Plan is not confirmable.

Some final notes. Since the objection is sustained without prejudice, the court anticipates that Debtor will file another plan. The court also anticipates that Creditor will object to a re-filed plan if it includes an interest rate on its secured claim of less than 12%. See dkt. 16 at 2:22-23 ("The Creditor therefore objects to **any** Plan which fails to provide for interest at less than 12% per annum."). Creditor is advised that the court - not Creditor - sets an appropriate interest rate. So to the extent any re-filed plan proposes an interest rate above prime but below 12%, and to the extent Creditor objects to the interest rate without any factual or evidentiary basis for doing so, the court will appoint its own interest rate expert and allocate 100% of the expert's expense to Creditor. See e.g., Fed. R. Evid. 706(a), (c)(2). Additionally, the length of a plan term is determined by Debtor's income and/or cause and, again, not by Creditor. See dkt. 16 at 3:6-7 ("Secured Creditor objects to **any**

Plan which exceeds thirty-six (36) months without good cause shown."').<sup>1</sup> Creditor is cautioned that any objection to a plan term without any factual basis for doing so or under an improper standard may result in the court sanctioning Creditor and its attorney under Fed. R. Civ. P. 9011 and/or its inherent authority.

The objection will be ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

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<sup>1</sup>The standard under § 1322(d) is "cause" not "good cause." See dkt. 16 at 3:6-8. There is a difference.

3. [22-90153](#)-B-13 DIANE DOKKHAM  
[CRG](#)-10 Carl R. Gustafson

MOTION TO CONFIRM PLAN  
2-13-23 [[129](#)]

### **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 fourth amended plan.

First, as previously mentioned in the court's order denying confirmation of the third amended plan, the Debtor's income to fund the plan relies on regular contributions from her father. The Debtor has not filed a declaration from her father establishing his willingness and ability to make the contributions.

Second, the loan of creditor Note Serv Center/Marilyn M. Combs fully matured and was due and payable as of July 1, 2020. Interest continues to accrue on the loan. The Debtor proposes commencing payment to the creditor in December 2022, which is six months into the case and three months ago. The Debtor's plan does not account for the accrued interest.

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 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 first amended plan.

First, the Internal Revenue Service filed proof of claim no. 6-1 with a secured portion of \$5,060.94. However, Debtor's plan does not list this claim, and the Debtor's budget and Statement of Financial Affairs are silent as to treatment of this creditor. Therefore, it cannot be determined whether Debtor intends to pay this creditor and its impact on the plan. 11 U.S.C. § 1325(a)(6).

Second, the Debtor testified that the information on the Schedule I filed at the inception of the case is no longer accurate. Until Debtor files amended schedules to accurately reflect her current income, it cannot be determined whether the Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to general unsecured creditors. 11 U.S.C. § 1325(a)(6), (b)(1).

Third, the Debtor needs to file an attachment to Schedule I that provides for her business income and expenses. Without this attachment, it cannot be determined whether the Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to general unsecured creditors. 11 U.S.C. § 1325(a)(6), (b)(1).

Fourth, the Debtor has failed to provide the Chapter 13 Trustee with a copy of her liability riders, workers' compensation riders, if applicable, and a year-to-date profit and loss statement for business Appolo Pblow, Inc. dba Sandy Bottoms Tanning Salon. Without this information, it cannot be determined whether Debtor's plan is feasible. 11 U.S.C. § 1325(a)(6).

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.

5. [22-90157](#)-B-13 OSCAR/SANDRA LOPEZ  
[LBF](#)-1 Lauren Franzella

MOTION TO MODIFY PLAN  
1-13-23 [[56](#)]

WITHDRAWN BY M.P.

**Final Ruling**

The Debtors having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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

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6. [22-90378](#)-B-13 ROBERT HARDING MOTION TO CONFIRM PLAN  
[CLH](#)-1 Charles L. Hastings 2-14-23 [[43](#)]

WITHDRAWN BY M.P.

**Final Ruling**

The Debtors having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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



7. [22-90379](#)-B-13 JAMES MAHONEY  
[DCJ](#)-2 David C. Johnston

MOTION TO CONFIRM PLAN  
2-3-23 [[32](#)]

### **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.

Debtor's plan is not feasible. 11 U.S.C. §1325(a)(6). Debtor's plan provides for Truist Bank as a Class 1 creditor with a post-petition mortgage payment of \$3,350.00 per month. However, Truist Bank has filed a Claim No. 7-1 indicating a monthly post-petition mortgage payment of \$4,091.71. With the increased mortgage payment, Debtor's plan is not feasible.

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.

8. [22-90480](#)-B-13 KEVIN NGUYEN  
[RDG](#)-1 Simran Singh Hundal

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
2-27-23 [[14](#)]

### **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, Debtor's plan is not proposed in good faith. 11 U.S.C. § 1325(a)(3). Debtor's Schedule J, line 21, includes a car payment expense of \$641.64 for a 2016 BMW of his girlfriend. The vehicle and loan are both in the girlfriend's name, the girlfriend is employed and does not live with the Debtor, and the vehicle is used by the girlfriend and kept at her residence. Therefore, the vehicle expense is not necessary and is inappropriate.

Second, given that the vehicle expense stated above is inappropriate, Debtor's monthly disposable income is approximately \$1,350.18. When multiplied by the applicable commitment period of 60 months, this would yield a distribution to Debtor's general unsecured creditors of \$81,010.80, or 100% distribution to general unsecured claims of \$69,985.00. Debtor's plan currently proposes only \$62.8% distribution to general unsecured creditors. Accordingly, Debtor's plan fails the projected disposable income test of 11 U.S.C. § 1325(b).

The plan filed December 30, 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.

9. [22-90093](#)-B-13 JAMES RIDDLE  
[JNV](#)-7 Jason N. Vogelpohl

MOTION TO CONFIRM PLAN  
2-8-23 [[99](#)]

### **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.