

**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 22, 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

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

1. [16-91000](#)-B-13 MAURICE/VENISE SMALLEY MOTION TO MODIFY PLAN
[BSH](#)-7 Brian S. Haddix 2-15-22 [[106](#)]

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.

The Debtors are delinquent in the amount of \$1,049.04. The Debtors do not appear to be able to make plan payments proposed and have 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.

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

2. [19-90303](#)-B-13 SONIA PALACIOS
[BSH](#)-1 Brian S. Haddix

MOTION TO MODIFY PLAN
1-14-22 [[33](#)]

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 is not feasible. The Nonstandard Provisions in Debtor's plan are unclear and contradictory as to the monthly plan payment to be made. Section 7 of Debtor's plan provides that delinquent plan payments shall be suspended through November 2021 and new dividends to begin December 2021. However, Debtor's Section 7 then provides that the plan payment shall be as follows: "Months 31-39 (November 2021 through July 2022) \$635.00 per month for 8 months. Months 40-84 (August 2022 through April 2026) \$1,173.00 per month for 46 months." Months 31 through 39 is nine months in total, not eight, and this provision is contradictory to the statement that provides all delinquencies shall be suspended through November 2021 with new payments beginning December 2021. Trustee cannot administer the plan without clarifying if plan payments shall begin November 2021 or December 2021.

Second, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. Debtor's updated Schedule I and J indicate Debtor has experienced an income decrease of approximately \$5,052.00 per month. Trustee has requested recent pay advices to support the decreased income and how the figures on Schedule I were determined. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

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.

3. [18-90506](#)-B-13 ROBIN HAMADE-GAMMON
[BSH](#)-10 Brian S. Haddix

MOTION TO MODIFY PLAN
2-15-22 [[180](#)]

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 is not feasible under 11 U.S.C. §1325(a)(6). Debtor's plan proposes a monthly payment of \$165.00 beginning October 2021. Debtor has 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. Trustee has raised the same issue in his Opposition to Motion to Modify but Debtor has yet to address this concern once again. Dkt. 177.

Second, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. Debtor's declaration in support of the motion indicates Debtor has a job as a cashier, but Debtor's most recent Schedule I fails to list any employment. As such, Trustee has requested current pay advices to support Debtor's income. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

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.

4. [19-90411](#)-B-13 MICHAEL/DEANNA BAKER MOTION TO MODIFY PLAN
[BSH](#)-4 Brian S. Haddix 12-22-21 [[66](#)]

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.

Co-Debtor Deanna Baker has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. Debtors' updated Schedule I indicates that her gross monthly income is \$5,650.00 from her employment at Doctors Medical Center in Modesto, California. The pay stubs provided to Trustee to support co-Debtor Deanna Baker's income appear to be from two separate places of employment in Oklahoma, where Debtors now reside, and are dated from August 2021 to December 2021. It cannot be determined if co-Debtor Deanna Baker is working at two different locations or if she is a full-time employee at one location. Trustee has requested more recent payment advices, clarification on co-Debtor Deanna Baker's employment status at Norman Hospital Authority and Integris Health, and also a detailed month by month analysis as to how the figure on Schedule I was computed. It cannot be determined if Debtors' plan is proposed in good faith and pays all projected disposable income into the plan. The Debtors have not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

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.

5. [20-90339](#)-B-13 BRIAN/TERI SMITH
[RKW](#)-1 Richard Kwun

MOTION TO MODIFY PLAN
2-1-22 [[84](#)]

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, Debtors include a Section 7 Nonstandard Provisions in the plan but does not select Section 1.02 indicating that there is a nonstandard provision that should be given effect. Feasibility of the plan cannot be determined pursuant to 11 U.S.C. § 1325(a)(6).

Second, the Debtors have failed to provide evidence that the plan is mathematically feasible. The plan provides a monthly payment of \$1,490.00 from February 2022 through September 2022, and \$1,535.00 from October 2022 through December 2022. Based on the claims that have been filed to date, the Debtors' monthly plan payment will need to be at least \$5,923.00 in order for the plan to be feasible as proposed paying unsecured creditors 100% plus interest at the Federal Judgment Rate of 0.57% within a 31 month plan term. 11 U.S.C. § 1325(a)(6).

Third, Debtors' proposed plan provides for Travis Credit Union as a Class 2 claim in the secured amount of \$20,000.00 to be paid a monthly dividend of \$377.42 at 5.75% interest. As of February 2022, the balance owed to Travis Credit Union is \$19,245.16 and there are 11 months remaining in the 31 month proposed plan term. The plan will take approximately 57 months to complete, which exceeds the 31-month proposed plan term, and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Fourth, the Debtors are delinquent in the amount of \$2,284.01 under the currently confirmed plan. Debtors' motion and declaration are silent as to this delinquency, and it cannot be determined if what caused the delinquency has been rectified, or if Debtors will be able to make future plan payments. The Debtors do not appear to be able to make plan payments proposed and have 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.

6. [18-90947](#)-B-13 RONALD HOLLIS
[BSH](#)-3 Brian S. Haddix

MOTION TO MODIFY PLAN
2-15-22 [[48](#)]

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 plan fails to specify a cure of the post-petition arrearage owed to Freedom Mortgage Corporation in Class 1 for the month October 2021 in the amount of \$1,742.46. The plan does not comply with 11 U.S.C. § 1325(a)(1).

Second, the plan payment in the amount of \$2,250.00 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 monthly amounts plus Trustee's fees is \$2,377.78. Trustee acknowledges that as of February 8, 2022, a monthly dividend of \$150.00 for administrative fees is unnecessary as all attorney fees have been paid in full. Should Debtor's attorney petition the court for additional fees, a plan payment of \$2,250.00 is insufficient to fund the total monthly dividends. 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.

7. [20-90247](#)-B-13 JEANETTE PIMENTEL
[BSH](#)-7 Brian S. Haddix

MOTION TO MODIFY PLAN
12-23-21 [[92](#)]

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.

8. [21-90557](#)-B-13 DUANE SHUGART
[EML](#)-2 Evan Livingstone

OBJECTION TO CLAIM OF U.S BANK
TRUST NATIONAL ASSOCIATION,
CLAIM NUMBER 3
2-14-22 [[30](#)]

Final Ruling

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b) (2). When fewer than 44 days' notice of a hearing is given, parties in interest were not required to file a written response or opposition. Nevertheless, for the reasons explained below, the relief requested can not be granted so further briefing is unnecessary.

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 overrule the objection to Claim No. 3-1 of U.S. Bank Trust National Association.

The Debtor requests that the court disallow the claim of U.S. Bank Trust National Association ("Creditor"), Claim No. 3-1. The claim is asserted to be secured in the amount of \$58,434.15. The Debtor asserts that Creditor has claimed excessive fees and costs on its proof of claim. First, Debtor disputes the property inspection fees charged on February 27, 2020 and January 11, 2021, totaling \$33.00, because Debtor was current on his mortgage when these charges were incurred. Second, Debtor disputes the publication charge incurred on October 13, 2021, totaling \$2,992.04, alleging the cost is excessive and unreasonable. The total amount of fees disputed by Debtor in Creditor's claim is \$3,025.54.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

Debtor has not filed any evidence from the mortgage agreement with Creditor, or any legal authority, indicating that property inspection fees may only be charged when the mortgagee is not current on payments. Moreover, as to both the property inspection and publication fees, even assuming that the declaration of the Debtor's attorney's is admissible evidence, and further assuming that as such it is probative, reliable, and credible, the declaration states only that the property inspection and publication fees are either excessive or not owed. Neither statement is sufficient under the local rule to overcome the presumptive validity of the proof of claim.

The objection is ORDERED OVERRULED for reasons stated in the minutes.

The court will issue an order.

9. [19-90193](#)-B-13 JOSE/CLAUDIA ACEVES
[JCK](#)-5 Gregory J. Smith

MOTION TO MODIFY PLAN
2-10-22 [[131](#)]

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, subject to the condition noted below.

Trustee filed an objection asserting that Debtors' plan payment in the amount of \$5,698.00 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 monthly amounts plus Trustee's fees is \$5,804.55.

Debtors filed a response to Trustee's Objection stating they "will pay \$58904.55 to take care of the increased conduit payment to Loan Care LLC", which presumably contains a typographical error, meant to refer to the aggregate of the monthly amounts plus Trustee's fees of \$5,804.55. Debtors also filed an amended Schedule J on February 24, 2022 reflecting a monthly net income of \$5,804.00. Debtors' updated Schedule J indicates they have the ability to pay the increased monthly payment, and as such the modified plan confirms with 11 U.S.C. §§ 1322 and 1325(a). The increased monthly payment shall be provided for in the confirmation order.

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.