

**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 28, 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 28, 2023 at 1:00 p.m.

-
1. [22-90426](#)-B-13 KENDALL/CYNTHIA MILLER CONTINUED OBJECTION TO
[RDG](#)-1 Brian S. Haddix CONFIRMATION OF PLAN BY RUSSELL
D. GREER
1-17-23 [[23](#)]

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, all sums required by the plan have not been paid, 11 U.S.C. § 1325(a)(2), and the Debtors may not be able or willing to make the plan payments based on their delinquency under the pending plan, 11 U.S.C. § 1325(a)(6). The Debtors are \$3,300.00 delinquent in plan payments. The Debtors have paid \$5,700.00 into the plan to date. The last payment in the amount of \$2,700.00 was posted to Debtors' account on February 1, 2023.

Second, Debtors' Schedule I includes pension or retirement income of \$542.00 for Mr. Kendall Miller. Debtors have failed to provide any documentation to verify the pension and the pension income does not appear on debtors' 2021 income tax returns.

Third, additional pay advices from Mrs. Cynthia Miller are necessary to explain why the year-to-date earnings do not match the totals on Schedule I.

Fourth, additional information is needed regarding Debtors' Social Security Benefits in the amount of \$150,000 in 2021. Without the additional information, it cannot be determined whether the plan provides all of Debtors' projected disposable income will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

The plan filed November 20, 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.

March 28, 2023 at 1:00 p.m.

Page 1 of 2

2. [22-90354](#)-B-13 VINCENT JONES
[RDG-2](#) Peter G. Macaluso

MOTION TO DISMISS CASE
3-9-23 [[52](#)]

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 **continue the matter to April 11, 2023, at 1:00 p.m.**

The Chapter 13 Trustee objects to confirmation on grounds that there is no pending plan and motion to confirm after the original and first amended plans were denied confirmation. This is an unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed a response stating that he is current on plan payments and is diligently seeking a loan modification. Debtor also states that his counsel has not been able to meet with him due to two trials and depositions. Debtor requests a continuance of the motion to dismiss case.

The matter will be continued for two weeks, at which time the Debtor is to have filed a motion to approve loan modification and a second amended plan and motion to confirm it. If the Debtor fails to do so, the court will find that the Debtor has caused an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1) and the case will be dismissed.

The court will issue an order.