

**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: April 5, 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

**April 5, 2022 at 1:00 p.m.**

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1.	<a href="#"><u>22-20120</u></a> -B-13	JUAN/MARIA SALAS	OBJECTION TO CONFIRMATION OF
	<a href="#"><u>RDG</u></a> -1	Peter G. Macaluso	PLAN BY RUSSELL D. GREER
			3-8-22 [ <a href="#"><u>37</u></a> ]

**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.

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 overrule the objection and confirm the plan.

Trustee filed an objection to confirmation based on two grounds, the first being that feasibility of Debtors' plan depends on the granting of a motion to value collateral of Wells Fargo Auto Finance for a vehicle. That motion to value collateral was heard and granted on March 15, 2022. Dkt. 41. The second ground for Trustee's objection was that feasibility of Debtors' plan relies on the granting of a motion to value collateral of Great Western Trust for real property. That motion to value collateral was heard and granted on March 15, 2022. Dkt. 42. Both grounds for Trustee's objection have been resolved.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed January 18, 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 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.

**April 5, 2022 at 1:00 p.m.**

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2. [21-23531](#)-B-13 DIANA QUIROGA  
[RJ-2](#) Richard L. Jare

MOTION TO CONFIRM PLAN  
2-20-22 [[44](#)]

### **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.

First, feasibility of the plan depends on the granting of a motion to value collateral of OneMain Financial Services for a vehicle. To date, the Debtor has not filed, served, or set for hearing a valuation motion pursuant to Local Bankr. R. 3015-1(j).

Second, the Debtor has failed to provide evidence that the plan is mathematically feasible. The plan provides a monthly payment of \$1,698.67 and a 0% dividend to general unsecured creditors. Based on the claims that have been filed to date, the Debtor's monthly plan payment will need to be at least \$1,861.34 in order for the plan to be feasible as proposed paying unsecured creditors 0%. 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.

3.     [21-20770](#)-B-13   ANGELAS ASHLEY                   MOTION TO CONFIRM PLAN  
       [JLL](#)-4             Jennifer G. Lee                 2-21-22 [[83](#)]

**Final Ruling**

The motion 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 court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to deny the motion to confirm as moot.

Subsequent to the filing of the Debtor's third amended plan, a fourth amended plan was filed on March 10, 2022. The confirmation hearing for the amended plan is scheduled for April 19, 2022. The earlier plan filed February 21, 2022, is not confirmed.

The motion is ORDERED DENIED AS MOOT for reasons stated in the minutes.

The court will issue an order.

4. [22-20079](#)-B-13 LILLY LUTOLF  
[RDG-2](#) Matthew J. DeCaminada

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
3-8-22 [[21](#)]

### **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 Form 122C-1 is based on a household size of two, yet Debtor's Schedule J indicates Debtor's household is comprised of seven people. Without amended schedules that accurately represent Debtor's household size, it cannot be determined whether the plan provides that all of Debtor's projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan under 11 U.S.C. §1325(b).

Second, Debtor's petition states Debtor's address is 2660 Highway 88 Apt. 30, Pioneer, California, 95666. However, the bank statements, pay advices, and tax returns provided to Trustee indicate Debtor's address is 26600 Highway 33, Apt. 30, Pioneer, California, 95666. Without confirmation of an accurate address, it cannot be determined whether the plan has been proposed in good faith. 11 U.S.C. §1325(a)(3).

Third, Debtor's plan lists a claim owed to Mid America Mortgage to be paid as a Class 1 claim for the property located at 5934 Park Circle, Ione, California, 95640. Accordingly, Debtor's Schedule J lists a housing expense of \$0.00 as the mortgage of \$1,173.56 is being paid through the plan. However, as it appears Debtor resides at a different address in Pioneer, California, it cannot be determined whether Debtor's plan is proposed in good faith under 11 U.S.C. §1325(a)(3), or if her plan is feasible under 11 U.S.C. §1325(a)(6). Debtor's schedules do not provide for an additional housing expense, if any, for Debtor's current residence in Pioneer, California, nor do the schedules explain the current situation with the address in Ione, California. Trustee has requested Debtor clarify her housing arrangements, disclose if any rental income is received, and also to amend her schedules as necessary.

Fourth, the plan payment in the amount of \$1,935.00 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 \$1,978.71. The plan does not comply with Section 5.02 of the mandatory form plan.

Fifth, the Debtor admitted at her 341 Meeting of Creditors on March 17, 2022 that she has filed her 2021 tax returns. Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed or a written statement that no such documentation exists. The Debtor has not complied with 11

Sixth, the Debtor admitted at her 341 Meeting of Creditors on March 17, 2022 that she has obtained new employment. Trustee has requested Debtor provide pay advices from her new job when available, and to amend her schedules accordingly. Without the new pay advices and an updated Schedule I and/or Schedule J, it cannot be determined if Debtor's plan is feasible and proposed in good faith. 11 U.S.C. §§ 1325(a) (6) and 1325(a) (3).

The plan filed January 12, 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.

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<sup>1</sup>There is authority for the proposition that a trustee may not use § 521 to compel a debtor to turnover state income tax returns. See e.g., *Romeo v. Maney (In re Romeo)*, 2018 WL 1463850, \*5-6 (9th Cir. BAP 2018). An objection that state income taxes have not been produced under § 521 may therefore not survive scrutiny. That said, withholding state income tax returns and thereby preventing the trustee from performing statutory duties may nevertheless be interpreted as bad faith conduct sufficient to warrant a denial of confirmation or even dismissal. The court need not reach this issue here because the Trustee's other objections are a sufficient basis on which confirmation may be denied.

5. [22-20097](#)-B-13 ARTHUR MENDOZA AND OBJECTION TO CONFIRMATION OF  
[RDG](#)-1 CONSUELO LEYVA MENDOZA PLAN BY RUSSELL D. GREER  
Mikalalah R. Liviakis 3-8-22 [[19](#)]

### **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.

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, Debtors' plan is not feasible. Creditor Ally Bank has filed a proof of claim listing a secured amount of \$47,304.98. Debtors' plan does not provide for this secured claim. Without providing for this claim, it cannot be determined whether Debtors intend to pay this creditor. 11 U.S.C. § 1325(a)(6).

Second, the Debtors do not appear to have the ability to fund the plan. Debtors' Schedule J, Line #23, shows a monthly net income of \$1,278.58. However, Debtors' plan provides a monthly payment of \$2,170.00. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Debtors filed a response proposing amendments to the plan such that it may comply with 11 U.S.C. §§ 1322 and 1325(a). The substantive alterations proposed in Debtors' motion must come in the form of a new plan filed by Debtors, rather than in their response to Trustee's objection.

The plan filed January 14, 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.

6. [21-24236](#)-B-13 JONATHAN LA VINE MOTION TO DISMISS CASE  
[RDG](#)-1 Pro Se 3-10-22 [[22](#)]

**Final Ruling**

This matter was continued from March 29, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, April 1, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 29, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on April 5, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.