

**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: May 4, 2021

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

May 4, 2021 at 1:00 p.m.

1. [21-90001](#)-B-13 GORDON/WANDA CRAWFORD MOTION TO CONFIRM PLAN
[DCJ](#)-1 David C. Johnston 3-19-21 [[26](#)]

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 Debtors have 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 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.

May 4, 2021 at 1:00 p.m.

2. [21-90011](#)-E-7 ALFREDO/MARTA ACOSTA
[RDG](#)-1 Tamie L. Cummins

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
3-8-21 [[16](#)]

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 a confirmation order, the court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b) since deductions for various insurance expenses appear in both Schedules I and J. It is unclear whether the Debtors provided an explanation for this at the continued meeting of creditors held on April 28, 2021, but they did file amended Schedules I and J on April 19, 2021, dkt. 31.

Second, Debtors' plan may not be feasible. 11 U.S.C. §1325(a)(6). The pay advices provided for Debtor Alfredo Acosta include deductions for contributions to retirement accounts. These deductions do not appear on Debtors' amended Schedule I, dkt. 31, and Debtor has admitted that the voluntary contributions have been stopped. Accordingly, Trustee requested a copy of Debtor's recent pay advice to verify that the deduction has been stopped. It is unclear whether the pay advice was provided to the Trustee.

The plan filed January 12, 2021, 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.

3. [20-90514](#)-B-13 CALVIN/BRENDA MILLERBIS MOTION TO MODIFY PLAN
[LBF](#)-1 Lauren Franzella 3-18-21 [[30](#)]

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 Debtors have 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 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.

4. [20-90187](#)-B-13 JENENE DEBOW
[MC-2](#) Muoi Chea

MOTION TO MODIFY PLAN
3-24-21 [[34](#)]

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.

Final Ruling

The motion 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 this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to not permit the requested modification and not confirm the modified plan.

The Chapter 13 Trustee objects to confirmation of the modified plan on grounds that the Debtor is delinquent \$6,642.00 under the proposed plan, Debtor's net income is \$5,965.00 and would be unable to make the proposed plan payment of \$6,642.00, and the Debtor does not provide an explanation for why he is delinquent in the amount of \$25,891.00 under the currently confirmed plan. In sum, the proposed plan is not feasible pursuant to 11 U.S.C. § 1325(a).

Debtor filed a response stating that he will pay \$13,284.00 on or before April 30, 2021, to be current under the proposed plan. Debtor explains that the delinquency is due to variations of income in the trucking business but that he was able to make the January and February 2021 payments. Debtor further states that he will be able to make future plan payments because a prior significant expense surrounding mechanical issues for a financed forklift has been resolved. The court is not persuaded by the response.

Even if the Debtor cures the existing default by April 30, 2021, there is no evidence that, going forward, the Debtor has the ability to make monthly plan payments in an amount greater than his current monthly income. The unsupported and unsubstantiated statements by the Debtor's attorney that the Debtor can make such payments included in the response to the Trustee's objection are not evidence. *Singh v. INS*, 213 F.3d 1050, 1054 n.8 (9th Cir. 2000) (counsel's statements in briefs are not evidence).

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

The court will issue an order.

6. [16-91029](#)-B-13 WENDELL AKENS
[RDG](#)-2 David Foyil

CONTINUED MOTION TO DISMISS
CASE
4-13-21 [[57](#)]

Final Ruling

This case was continued from April 27, 2021, to allow any response or opposition to be filed by April 30, 2021. Nothing was filed. Therefore, the court's conditional ruling at dkt. 66 shall become the court's final decision. The continued hearing on May 4, 2021, at 1:00 p.m. is vacated.

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

The court will issue an order.

7. [15-91197](#)-B-13 CATHERINE MADAGONI
[RDG](#)-3 Peter G. Macaluso

CONTINUED MOTION TO DISMISS
CASE
4-13-21 [[140](#)]

Final Ruling

This case was continued from April 27, 2021, to allow the Debtor additional time for her plan payment to be received by the Chapter 13 Trustee, since the Debtor lives out of state. The Trustee filed a supplemental reply on April 29, 2021, stating that the Debtor made her payment and the case is now complete and ready to close. Therefore, the court's conditional ruling at dkt. 147 is vacated and the motion to dismiss case is denied.

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

The court will issue an order.