

**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: May 7, 2024**

**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

**May 7, 2024 at 1:00 p.m.**

---

- |    |  |   |
|----|--|---|
| 1. | <a href="#"><u>24-20514</u></a> -B-13    FRANK STRATTON<br><a href="#"><u>LGT</u></a> -1             Carl R. Gustafson | OBJECTION TO CONFIRMATION OF<br>PLAN BY LILIAN G. TSANG<br>4-8-24 [ <a href="#"><u>15</u></a> ] |
|----|--|---|

**Final Ruling**

The Chapter 13 Trustee having filed a notice of dismissal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed February 9, 2024, will be confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

2. [23-22416](#)-B-13 THOMAS ANDERSON  
[JLL](#)-1 Leo G Spanos

MOTION TO CONFIRM PLAN  
3-27-24 [[55](#)]

### **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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

3. [24-20328](#)-B-13 EDUARDO ASUNCION  
[CRG](#)-1 Carl R. Gustafson

MOTION TO CONFIRM PLAN  
3-23-24 [[18](#)]

**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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

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 the second amended plan.

First, Debtors' plan is not feasible. Debtors' plan provides for attorney fees in the amount of \$6,313.00 to be paid at a monthly dividend of \$1,200.00 Dkt. 54:2. Pursuant to Local Bankruptcy Rule 2016-1(c)(4)(B) the payment flat fees must be paid in equal monthly installments over the term of the plan. Debtors' plan is a 60-month plan. Trustee estimates a monthly dividend of \$105.22 is necessary to pay the claim in full within Debtors' 60-month plan term.

Second, Debtors' plan lists a claim owed to SPS Select Portfolio Servicing in Class 1 with prepetition arrears of \$158,624.03 but fails to provide a monthly dividend payable to those arrears. Dkt. 54:3. Without providing for the monthly dividend to pay that claim, Debtors' plan is not feasible. 11 U.S.C. § 1325(a)(6).

Third, Debtors' proposed monthly plan payment of \$3,812.00 is not sufficient to cover payments owed to secured creditors and the Trustee's compensation and expense. These monthly payments total \$5,355.28 per month. Therefore, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Fourth, Dividend Finance has filed a proof of claim listing a secured portion of \$48,471.39 for solar panels. (Claim 5-1). Debtors' plan does not list this claim and their amended budget and Statement of Financial Affairs are silent as to treatment of this creditor. It cannot be determined whether Debtors intend to pay this creditor and, if it is to be paid, the impact on whether Debtors will be able to make all plan payments and comply with the plan. 11 U.S.C. § 1325(a)(6).

Fifth, Debtors amended budget evidences net disposable income of \$12,166.86. However, Debtors have proposed a plan payment of \$3,812.00 for 3 months, \$9,841.09 for 57 months, and a 6% dividend to general unsecured claims. Debtors' plan is not proposed in good faith. 11 U.S.C. § 1325(a)(3).

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. [24-20635](#)-B-13 PERLA ONG  
[LGT](#)-1 Eric J. Gravel

OBJECTION TO CONFIRMATION OF  
PLAN BY LILIAN G. TSANG  
4-11-24 [[16](#)]

### **Final Ruling**

The *initial* Chapter 13 Plan filed February 20, 2024, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to May 14, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

Debtor must file amended Form 122C-2 that accurately reflects her retirement contributions and amended Schedule I that accurately reflects her current budget. Without this information, it cannot be determined whether all of Debtor's projected disposable income is being applied to make payments to unsecured creditors under the plan, 11 U.S.C. § 1325(b), and whether the plan has been proposed in good faith, 11 U.S.C. 1325(a)(3).

The plan filed February 20, 2024, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

### **Conditional Nature of this Ruling**

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), party in interest shall have until 5:00 p.m. on May 10, 2024, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtor, the Debtor's attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on May 14, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on May 14, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED and CONTINUE to May 14, 2024 at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

6. [24-20254](#)-B-13 MARLON MAYO  
[EAM-2](#) Peter G. Macaluso  
**Thru #7**

OBJECTION TO CONFIRMATION OF  
PLAN BY DPS FINANCE COMPANY  
4-10-24 [[50](#)]

**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.

Creditor DPF Finance Company ("Creditor") objects to confirmation of the amended plan on various grounds including, but not limited to, the proposal of debtor Marlon Mayo ("Debtor") to modify Creditor's fully matured loan, secured by a principal residence, by making payments to Creditor for 36 months and thereafter selling or refinancing the residence to pay most of Creditor's secured claim. The sale or refinance of Debtor's principal residence is speculative. Even if the amended plan's treatment of Creditor's secured claim was otherwise permissible, the plan does not provide for periodic payments to creditor in equal monthly amounts. 11 U.S.C. § 1325(a)(5)(B)(iii).

Debtor filed a response stating that he intends to rebuild his credit over a minimum of two years and allow interest rates to go back down before refinancing. Debtor further states that he has over \$150,000 in equity in the residence, has proposed to pay Creditor at 10.5% interest that is at 2% above prime rate to meet the *Till* standard, and will contribute three lump sum payments to Creditor. However, this does not resolve the speculative nature of the sale or refinance of the property.

The plan filed April 1, 2024, 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.

7. [24-20254](#)-B-13 MARLON MAYO  
[PGM-1](#) Peter G. Macaluso

MOTION TO CONFIRM PLAN  
4-1-24 [[39](#)]

**Final Ruling**

The objection to confirmation filed by DPS Finance Company having been sustained at EAM-2, the motion to confirm plan is denied.

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 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). 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 deny without prejudice the motion to value collateral.

Debtor moves to value the secured claim of OneMaine ("Creditor"). Debtor is the owner of a 2014 Nissan Versa ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$2,235.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 7-1 filed by OneMain Financial is the claim which may be the subject of the present motion.

### **Discussion**

The court finds issue with Debtor's valuation. First, the declaration states that the valuation of the Vehicle is based on a Kelley Blue Book printout but this is a third-party industry source and, therefore, Debtor's opinion of value is based on hearsay. Fed R. Evid. 801-803; see also *In re Guerra*, 2008 WL 3200931, \*2 n.4 (Bankr. E.D. Cal. 2008) ("Filed with Guerra's declaration was an unauthenticated document titled: 'Edmonds.com True Market Value Pricing Report.' The court has not considered this attachment in that it is inadmissible hearsay[.]"). Second, the valuation provided by Debtor is a "trade in to a dealer." The standard here must be a retail valuation, taking into account the condition of the car. See 11 U.S.C. § 506(a).

In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The time value is determined is the date of filing of the petition without deduction for costs of sale or marketing. *Id.*

The Debtor has not persuaded the court regarding her position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

The court will issue an order.

9. [23-24678](#)-B-13 ROCIO ASTOQUILCA AND MOTION TO CONFIRM PLAN  
[RCW](#)-1 CONOR SAUNDERS 3-24-24 [[22](#)]  
Ryan C. Wood

### **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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

10. [24-20592](#)-B-13 GRACIELLE LEE  
[LGT](#)-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF  
PLAN BY LILIAN G. TSANG  
4-8-24 [[15](#)]

### **Final Ruling**

The Chapter 13 Trustee ("Trustee") filed an objection to confirmation of the initial Chapter 13 plan filed February 16, 2024. Because this is the initial Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies. Debtor Gracielle Lee ("Debtor") filed a reply.

The court's decision is to **continue the hearing to May 14, 2024, at 1:00 p.m.**

The Trustee objects to plan confirmation because Claim 3-2 filed by the Internal Revenue Service has caused the plan to no longer be feasible. 11 U.S.C. § 1325(a)(6). Debtor's plan provides for a total priority debt of \$13,825 but the amended priority claim amount filed by the IRS is \$19,428.

Debtor filed a reply stating that she will resolve this issue by increasing her proposed plan payment by an additional \$500 per month beginning in month 31. Debtor states that she expects to receive a \$500 raise in two years and that this modification may be included in the order confirming plan.

At this point and without any declaration or evidence from Debtor, the anticipated pay raise of \$500 per month is speculative. However, rather than sustain the objection, the court will continue the matter to May 14, 2024, at 1:00 p.m., to provide the Debtor additional time to provide supporting evidence that her income will indeed increase.

The court will issue an order.