

**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 16, 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
Sacramento, California

May 16, 2023 at 1:00 p.m.

1.	23-20704 -B-13	PEGGY/JOHNNY BOYNTON	OBJECTION TO CONFIRMATION OF
	RDG -1	Michael K. Moore	PLAN BY TRUSTEE RUSSELL D.
			GREER
			4-24-23 [23]

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 March 20, 2023, 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 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.

May 16, 2023 at 1:00 p.m.

2. [23-20710](#)-B-13 FREDERICK GROSS
[RDG](#)-1 Grace S. Johnson

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-24-23 [[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). 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 matter is **continued to May 23, 2023, at 1:00 p.m.**

The Chapter 13 Trustee raised issues pertaining to Debtor's and his non-filing spouse's gross income. The Debtor stated that he plans to work with the Trustee's office to resolve this issue and determine an appropriate plan payment.

A review of the court's docket shows that the Debtor filed an amended Disclosure of Compensation of Attorney for Debtor(s) on May 14, 2023.

Rather than continue this matter by 45 to 60 days as requested by the Debtor, the objection to confirmation will be continued to May 23, 2023, at 1:00 p.m. so as to avoid any prejudice to creditors. The Trustee shall file a supplemental response by 5:00 p.m. on May 19, 2023, as to whether its issues are resolved.

The court will issue an order.

3. [22-21126](#)-B-13 DOUGLAS/NYLA STONE
[CRG](#)-5 Carl R. Gustafson

MOTION TO MODIFY PLAN
4-5-23 [[160](#)]

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.

The Chapter 13 Trustee objects to confirmation on grounds that the Debtors' plan provides for reduced plan payments from \$1,730.00 to \$1,250.00 beginning April 2023 and have failed to file supplemental Schedules I and/or J to support the plan payment.

A review of the court's docket shows that the Debtors filed amended Schedules I and J on May 10, 2023, that reflect their reduced monthly net income. Therefore, the objection is resolved.

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.

4. [22-20050](#)-B-13 SERENA TURCHIE
[PGM](#)-2 Peter G. Macaluso

MOTION TO MODIFY PLAN
4-10-23 [[61](#)]

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 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, the plan is not feasible because it relies on a speculative sale of his primary residence on or before May 31, 2023, to pay a lump sum of \$105,911.25 to the Chapter 13 Trustee. This is two weeks from the confirmation hearing and there is no pending motion to sell in this case.

Second, Debtor's motion and declaration are silent as to what impact the sale of his primary residence will have on his budget. 11 U.S.C. § 1325(a)(6). This issue was raised by the Chapter 13 Trustee in a prior objection to confirmation and sustained on February 7, 2023.

Third, the plan fails to provide for the priority claims of the Internal Revenue Service and the Franchise Tax Board. The plan therefore fails to comply with 11 U.S.C. § 1322(a)(2).

Fourth, the plan proposes an impermissible modification of the first mortgage on Debtor's principal residence, which is not permitted under 11 U.S.C. § 1322(b)(2).

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.

6. [23-20686](#)-B-13 SAMUEL/DEBORAH POWERS
[RDG](#)-1 Matthew J. DeCaminada

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-24-23 [[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 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 under 11 U.S.C. § 1325(a)(6). Monthly payments to secured creditors total \$2,347.91 per month without Trustee compensation and expense, and with Trustee compensation and expense total \$2,563.22 per month. Debtors' plan payment is only \$2,550.00 per month.

Second, Debtors' plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3) because it was not signed by Debtors or their attorney.

The plan filed March 3, 2023, 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. [23-20390](#)-B-13 KIMBERLY WHITAKER
[WLG](#)-1 Nicholas Wajda

OBJECTION TO CLAIM OF EDWARD E.
MARTELLE, CLAIM NUMBER 5-1
3-29-23 [[20](#)]

DEBTOR DISMISSED: 4/23/23

Final Ruling

The case having been dismissed on April 23, 2023, the objection to claim is overruled as moot.

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

The court will issue an order.

8. [21-20499](#)-B-13 SUSAN MAHLER
Nicholas Wajda

MOTION FOR COMPENSATION FOR
NICHOLAS M. WAJDA, DEBTORS
ATTORNEY(S)
4-7-23 [[121](#)]

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 **continue the matter to May 23, 2023, at 1:00 p.m.**

Request for Additional Fees and Costs

As part of confirmation of the Debtor's Chapter 13 plan, Nicholas Wajda ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$4,000.00, of which \$1,000.00 was paid pre-petition. Dkt. 47. Applicant states that he received \$3,000.00 paid through the plan and now seeks additional compensation in the amount of \$925.00 in fees and \$0.00 in costs. This is calculated from Applicant's hourly rate of \$400.00 per hour for 2.5 hours.

Applicant provides a task billing analysis of the services provided. Dkt. 121. However, the task billing analysis was not filed as a separate exhibit. Additionally, no declaration was filed in support of the motion.

Rather than deny the motion for compensation, the court shall provide Applicant until 5:00 p.m. on May 19, 2023, to properly file the required documents. If Applicant fails to timely do so, the motion will be denied without prejudice at the continued hearing on May 23, 2023, at 1:00 p.m.

The court will issue an order.

9. [20-21602](#)-B-13 JOSE/LETICIA GONZALEZ CONTINUED MOTION TO MODIFY PLAN
[GSJ](#)-2 Grace S. Johnson 3-6-23 [[80](#)]

Final Ruling

CONTINUED TO MAY 23, 2023 AT 1:00 P.M.