

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 24, 2022 at 1:00 p.m.

1. [21-23801](#)-B-13 ROBERT MOLINA MOTION TO CONFIRM PLAN
[WLG](#)-3 Nicholas Wajda 4-6-22 [[75](#)]

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.

The feasibility of Debtor's plan was contingent on the court granting Debtor's Amended Motion to Avoid Judgment Liens Against Robert Frances Molina Impairing Debtor's Exemptions. Dkt. 82. Debtor's motion was heard and denied without prejudice on May 17, 2022. Creditor Christina Molina filed a proof of claim (Claim 6-1) in the amount of \$99,328.38, of which \$51,772.48 is claimed as secured and \$47,555.90 is claimed unsecured. As Debtor's plan does not provide for the secured claim, the feasibility of the plan was contingent on the court granting Debtor's motion to avoid creditor's lien. The court denied Debtor's motion, and as such Debtor's plan is not feasible. 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.

May 24, 2022 at 1:00 p.m.

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**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 24, 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.

2. [22-20609](#)-B-13 NERY LIMON
[RDG-1](#) Charles L. Hastings

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
5-4-22 [[17](#)]

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.

Plan Confirmation Issues

First, the Debtor is not eligible to be a debtor under 11 U.S.C. §109(e). A review of the claims filed to date indicates Debtor has noncontingent, liquidated, unsecured debts in the sum of \$2,393,693.38, which exceeds the eligibility limit for Chapter 13 of \$419,275.00

Second, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Third, Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtor's Schedule I indicates rental income of \$6,000.00 at line 8 and equipment rental of \$4,000.00 at line 8h. Debtor admitted at the 341 meeting of creditors that she is not earning this income at this time. Accordingly, Debtor will be unable to make the plan payment of \$6,807.79. Further, creditor Internal Revenue Service has filed a secured claim in the amount of \$409,300.00, and Debtor's plan does not provide for this secured claim. Without providing for this claim, it cannot be determined whether Debtor intends to pay this creditor. Additionally, Paragraph 3.06 of Debtor's plan fails to state the monthly dividend payable for attorney fees. Finally, Debtor admitted at the 341 meeting of creditors that Debtor has not filed Debtor's federal and state tax returns, and until Debtor files these returns and Trustee can review them, it cannot be determined whether Debtor's Chapter 13 plan is feasible. 11 U.S.C. § 1325(a)(6).

Fourth, Debtor and Debtor's attorney have filed a Rights & Responsibilities indicating that payments of attorney fees are to be made pursuant to Local Bankruptcy Rule 2016-1(C) or Debtor's plan; however, no box has been checked in Section 3.05 of the plan.

The plan filed March 28, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The Chapter 13 Eligibility Issue and Order for Debtor to Show Cause Why This Case Should not be Dismissed Pursuant to 11 U.S.C. § 109(e) with a Two-Year Refiling Bar.

As noted above, the Debtor's eligibility to be a chapter 13 debtor is at issue. "The bankruptcy court has the inherent power to sua sponte dismiss a case if the debtor is not eligible for relief." *Guastella v. Hampton (In re Guastella)*, 341 B.R. 908, 917 (9th Cir. BAP 2006).

Including this case, the Debtor has filed a total of eight bankruptcy cases since 2015. All prior cases were dismissed very shortly after they were filed. Almost all prior cases were dismissed for failure to timely file documents which strongly suggests the

prior cases were abusive, filed for an improper purpose, and were filed in bad faith. Almost all prior cases were also filed by the same attorney who apparently has no problem facilitating the Debtor's bad faith and abusive serial-filing conduct.

The Debtor's prior bankruptcy cases are: **(1)** Case No. 15-28572, a chapter 13 case, filed on November 3, 2015, and dismissed on December 3, 2015, for failure to timely file documents; **(2)** Case No. 16-20042, a chapter 13 case, filed on January 6, 2016, and dismissed on February 5, 2016, for failure to timely file documents; **(3)** Case No. 16-27564, a chapter 13 case, filed on November 15, 2016, and dismissed on December 5, 2016, for failure to timely file documents; **(4)** 17-27461, a chapter 13 case, filed on November 13, 2017, and dismissed on December 1, 2017, for failure to timely file documents; **(5)** 19-27112, a chapter 13 case, filed on November 15, 2019, and dismissed on December 3, 2019, for failure to timely file documents; **(6)** Case No. 20-22416, a chapter 13 case, filed on May 7, 2020, and dismissed on October 8, 2020, for failure to make any plan payments and failure to timely file a plan after denial of confirmation; **(7)** Case No. 21-20885, a chapter 13 case, filed on March 12, 2021, and dismissed on March 30, 2021, for failure to timely file documents.

Filed on March 15, 2022, this case was filed within one year of the dismissal of the Debtor's most recent chapter 13 case which was dismissed on March 30, 2021. That means three things. First, inasmuch as the docket does not reflect that the Debtor filed a timely motion to continue the automatic stay in effect more than thirty days after the petition date of this case, see 11 U.S.C. § 362(c)(3)(B), consistent with this court's prior decisions applying *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011), thirty days after the petition was filed the automatic stay of 11 U.S.C. § 362(a) terminated in its entirety. Second, there currently is no automatic stay in place in this case. And third, the presumption that this case was not filed in good faith has not been rebutted by clear and convincing evidence. See 11 U.S.C. § 362(c)(3)(C).

As to eligibility, chapter 13 eligibility is typically determined by reference to the schedules. *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001). Here, however, there is a sufficient basis to permit the court to look beyond the schedules for purposes of determining the Debtor's eligibility. See *Guastella*, 341 B.R. at 918. And in so doing, the court considers the \$2,809,948.44 proof of claim the Internal Revenue Service filed on April 7, 2022. See Claim 1-1. Of that amount, \$409,000.00 is claimed as secured and \$6,955.06 is claimed as priority leaving the balance as unsecured and, thus, far in excess of the debt limits in 11 U.S.C. § 109(e). The court further considers the IRS proof of claim without regard to whether it may be adjusted by post-petition events. *In re Harwood*, 519 B.R. 535, 539-540 (Bankr. N.D. Cal. 2014).

Therefore, based on the foregoing, the Debtor is **ORDERED** to show cause, in writing filed and served on the Chapter 13 Trustee, the United States Trustee, and all other parties in interest by May 31, 2022, why this case should not be dismissed based on the Debtor's ineligibility under 11 U.S.C. § 109(e) and, if dismissed, why dismissal should not include a two-year bar to refiling any single or joint case based on the Debtor's abusive and bad faith conduct described hereinabove.

Any party in interest may file and serve a response to the Debtor's response by June 7, 2022.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

FURTHER ORDERED that a hearing on this order to show cause will be held on June 14, 2022, at 11:00 a.m. The Debtor and counsel shall be present in court for the hearing. No phone appearance is permitted.

The court will issue a separate order to show cause.

3. [21-23220](#)-B-13 HARDEEP SINGH
[DCJ](#)-1 David C. Johnston
WITHDRAWN BY M.P.

MOTION TO CONFIRM PLAN
3-8-22 [[41](#)]

Final Ruling

The Debtor and Creditor having jointly filed a joint stipulation requesting removal of confirmation hearing from court's calendar for the pending motion, the joint stipulation being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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

4. [20-20322](#)-B-13 JEREMY/MELISSA MARTIN MOTION TO MODIFY PLAN
[JCK](#)-4 Gregory J. Smith 4-19-22 [[82](#)]

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.

5. [20-23025](#)-B-13 RAMON PADILLA
[TMO](#)-3 T. Mark O'Toole

OBJECTION TO CLAIM OF INTERNAL
REVENUE SERVICE, CLAIM NUMBER
14-7
3-15-22 [[106](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Debtor having filed a notice of withdrawal 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.

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

6. [19-25927](#)-B-13 TOBIAS GOMEZ
[RK-5](#) Richard Kwun

OBJECTION TO CLAIM OF PG&E,
CLAIM NUMBER 4
4-5-22 [[143](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant 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 sustain the objection to Claims No. 4-1 and No. 12-1 of Pacific Gas & Electric and disallow claim No. 4-1 in its entirety, and disallow claim No. 12-1 to the extent that it exceeds the current balance of Debtor's account of \$177.73.

The Debtor requests that the court disallow the claims of Pacific Gas & Electric ("Creditor"), Claim No. 4-1 and Claim No. 12-1. Claim No. 4-1 is asserted to be unsecured in the amount of \$504.79, and Claim No. 12-1 is asserted to be unsecured in the amount of \$808.85. With regards to claim No. 4-1, Debtor asserts that it has been superseded by claim No. 12-1. Claim No. 12-1 included language at line 2 that the claim does not amend an earlier filed claim. Debtor further asserts that the account number associated with claim No. 4-1 was never the number of his account with Creditor. Debtor asserts that claim No. 4-1 is redundant and not a separate and distinct claim from claim No. 12-1. Debtor further asserts that if claim No. 4-1 is allowed, it would result in an unearned windfall of \$504.79 to Creditor.

With regards to claim No. 12-1, the Debtor asserts that the current balance owed to Creditor has changed from the date of conversion. Debtor asserts that while he may have owed \$808.85 to Creditor on the day of conversion to a Chapter 13 case, the balance currently is \$177.73. Debtor has included his current bill from Creditor, filed as an exhibit to this motion, indicating the total amount owed is \$177.73, and states that the balance has been paid down in the ordinary course of consumer payments for utilities. Debtor further asserts that the current claim (No. 12-1) is incorrectly filed as a separate claim when Creditor instead should have amended the prior claim. Debtor asserts that if claim No. 12-1 is allowed, it would result in an impermissible advance of approximately \$631.00 to Creditor, and would deprive Debtor from paying other ordinary and necessary expense or his plan payment.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the Debtor has satisfied its burden of overcoming the presumptive validity of the claim. Based on the evidence before the court, Creditor's claim No. 4-1 is disallowed in its entirety and claim No. 12-1 is disallowed to the extent it exceeds Debtor's current balance of \$177.73. The objection to the proof of claim is sustained.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

7. [19-21461](#)-B-13 OLIVIA MERCADO
[RWF](#)-4 Robert W. Fong

MOTION TO MODIFY PLAN
4-7-22 [[73](#)]

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 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 Schedules I and J have not been prepared correctly. Debtor's Schedule I lists Debtor's net income from operating a business as \$22,411.00, however at the 341 meeting of creditors, Debtor admitted that this amount is actually the gross income from the operation of his two businesses. Until Debtor files amended schedules I and J to accurately reflect his income and expenses, it cannot be determined whether Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. Additionally, the Attachment to Schedule I which provides for Debtor's business income and expenses needs to be filed. Without this attachment, it cannot be determined whether Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. §§ 1325(a)(6) and 1325(b)(1).

Second, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. Debtor admitted at his 341 meeting of creditors that his 2021 income tax returns have been filed, yet Debtor has not provided a copy of these returns to Trustee. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(i).¹

Third, the Debtors' plan does not pass the liquidation test of 11 U.S.C. § 1325(a)(4). Debtor's schedules list non-exempt assets totaling \$323,722.00, and unsecured priority claims totaling \$0.00. Accordingly, there are non-exempt assets available for distribution to Debtors' general unsecured creditors of \$323,722.00. Trustee estimates that Debtors have non-priority general unsecured claims totaling \$70,932.00. In order to meet the liquidation test of 11 U.S.C. § 1325(a)(4), Debtors' plan must pay 100% to Debtors' general unsecured creditors, plus interest at the Federal Judgment Rate of 1.02% to Debtors' general unsecured creditors. Debtors' plan only pays 100%, and accordingly, it fails the liquidation test of 11 U.S.C. § 1325(a)(4).

The plan filed March 11, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

¹There 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, *infra*, is a sufficient basis on which confirmation may be denied.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

9. [20-24933](#)-B-13 THOMAS/RENEE IRELAND CONTINUED MOTION TO INCUR DEBT
 [BSH](#)-2 Brian S. Haddix 5-3-22 [[42](#)]

Final Ruling

This matter was continued from May 17, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, May 20, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 52, granting the motion, shall become the court's final decision. The continued hearing on May 24, 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.