

**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: June 1, 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

**June 1, 2021 at 1:00 p.m.**

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1. [18-90901](#)-B-13 GARY/COLEEN EDWARDS MOTION TO MODIFY PLAN  
[JAD](#)-4 Jessica A. Dorn 4-20-21 [[122](#)]

**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.

**June 1, 2021 at 1:00 p.m.**

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2. [21-90109](#)-B-13 MARK ESCALANTE  
[RDG-1](#) Thomas A. Moore  
**Thru #3**

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
5-3-21 [[35](#)]

**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.

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 overrule the objection and confirm the plan.

The Chapter 13 Trustee objects to confirmation on grounds that the Debtor must be examined at the continued meeting of creditors held May 26, 2021, that the Disclosure of Compensation of Attorney for Debtor (Form 2030) improperly excludes certain services, that Schedule I fails to include contributions from Debtor's adult children and accurate expenses, and that the Debtor has failed to exempt insurance proceeds with an appropriate code section.

Although the Debtor did not file any response to the Trustee's objection, a review of the court's docket shows that the Debtor filed amended schedules on May 27, 2021, addressing all the issues raised by the Trustee. The Debtor also attended the continued meeting of creditors and it was concluded.

Since the issues are resolved, the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed May 11, 2021, 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 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.

3. [21-90109](#)-B-13 MARK ESCALANTE  
[RDG-2](#) Thomas A. Moore

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
5-3-21 [[39](#)]

**Final Ruling**

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(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 overrule the objection.

The Chapter 13 Trustee objects to the Debtor's use of California Code of Civil Procedure § 704.730 to exempt Debtor's insurance proceeds. The Trustee states that the more appropriate code section is California Code of Civil Procedure § 704.720.

Although the Debtor did not file a response to the objection, a review of the court's docket shows that the Debtor filed an amended Schedule C on May 27, 2021, changing the exemption of insurance proceeds to California Code of Civil Procedure § 704.720. The Trustee's objection is therefore overruled.

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

The court will issue an order.

4. [19-91113](#)-B-13 PERFECTO/YOLANDA  
[JAD](#)-1 DELGADILLO  
Jessica A. Dorn

MOTION TO MODIFY PLAN  
4-13-21 [[22](#)]

### **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.

**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.

Debtor's plan is not be feasible under 11 U.S.C. §1325(a)(6) for the same reasons previously stated in the court's civil minutes to a prior motion to modify at dkt. 118. Debtor's Supplemental Schedule J lists a car payment in the amount of \$295.00 per month for a new vehicle. However, the court has not entered an order on an appropriate motion to incur debt to support that payment. Until the incurred debt amount is approved by the court, it cannot be determined whether Debtor's plan is feasible and whether Debtor is proposing to pay all her disposable income into the plan.

The modified plan does not comply with 11 U.S.C. §§ 1322 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 substitute Debtor John Milsap to continue administration of the case, and waive the deceased Joint Debtor Esther Milsap's certification otherwise required for entry of a discharge.

Debtor John Milsap ("Debtor") gives notice of the death of his wife Esther Milsap ("Joint Debtor") and requests the court to substitute Debtor in place of Joint Debtor for all purposes within this Chapter 13 proceeding.

### **Discussion**

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

- 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [FED. R. CIV. P. 25(a), (b); FED. R. BANKR. P. 1004.1 & 7025];
- 2) Continued administration of a case under chapter 11, 12, or 13 [FED. R. BANKR. P. 1016];
- 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Debtor for Joint-Debtor as successor-in-interest, and to waive the § 1328 and financial management requirements for Joint Debtor. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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

The court will issue an order.

7. [21-90002](#)-B-13 ROGER MANSOUR  
[RDG](#)-2 David C. Johnston

CONTINUED MOTION TO DISMISS  
CASE  
5-7-21 [[33](#)]

**Final Ruling**

This matter was continued from May 25, 2021, to allow any party in interest to file a response by May 28, 2021, at 5:00 p.m. as to why the case should not be dismissed. No response was timely filed.

Nonetheless, a review of the court's docket shows that the Debtor file a motion to confirm first amended plan on May 27, 2021, thereby mooted the grounds for dismissal of the case. The confirmation hearing is set for July 13, 2021. Therefore, the continued hearing on the motion to dismiss case set for June 1, 2021, at 1:00 p.m. is vacated and the motion is denied without prejudice.

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

The court will issue an order.



8. [19-90376](#)-B-13 KATHERINE MARTIN  
[RDG](#)-2 David C. Johnston

CONTINUED MOTION TO DISMISS  
CASE  
5-11-21 [[34](#)]

**Final Ruling**

This matter was continued from May 25, 2021, to allow any party in interest to file a response by May 28, 2021, at 5:00 p.m. as to why the case should not be dismissed. The Debtor filed a response on May 24, 2021, requesting that the hearing be continued to July 13, 2021, at 1:00 p.m. to coincide with the hearing on the objection to claim number 3 filed by Resurgent Capital Services on behalf of LVNV Funding, LLC.

Debtor's request will be granted and the motion to dismiss case shall be continued to July 13, 2021, at 1:00 p.m.

The court will issue an order.