

**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: June 8, 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
Sacramento, California

June 8, 2021 at 1:00 p.m.

1. [21-20223](#)-B-13 BRANDON BRASFIELD MOTION TO CONFIRM PLAN
[CDL](#)-40721 Colby D. LaVelle 4-26-21 [[30](#)]

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. 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.

June 8, 2021 at 1:00 p.m.

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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 by the Chapter 13 Trustee. A response was filed by the Debtor.

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, Nissan Motor Acceptance has filed proof of claim no. 4-1 indicating that the loan on the 2017 Nissan Rogue will be paid in full 72 months from April 6, 2017, or in April 2023, month 27 of debtor's 60-month plan. Accordingly, the correct classification of the claim is as a Class 2 claim to be paid by the Trustee through the plan pursuant to Section 3.08. Since the plan provides for the Class 2 claim to be paid outside of the plan by the Debtor, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Second, Toyota Motor Credit Corporation has filed proof of claim no. 5-1 indicating that the loan on the 2014 Toyota Scion will be paid in full 84 months from March 7, 2017, or in March 2024, month 38 of debtor's 60-month plan. Accordingly, the correct classification of the claim is as a Class 2 claim to be paid by the Trustee through the plan pursuant to Section 3.08. Since the plan provides for the Class 2 claim to be paid outside of the plan by the Debtor, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Third, Toyota Motor Credit Corporation has filed proof of claim no. 3-1 indicating that the loan will be paid in full 75 months from November 20, 2020, or in February 2027. Debtor's 60-month plan completes in January 2026. Accordingly, the correct classification of the claim should be as a Class 4 claim, a claim that matures after the completion of the plan.

Fourth, the plan may not be Debtor's best effort under 11 U.S.C. § 1325(b). Debtor's plan provides for payment of the 2017 Nissan Rogue, 2021 Toyota Corolla, and 2014 Toyota Scion as Class 2 creditors. However, Debtor claims monthly installment payments of \$409.20, \$438.20, and \$280.68 for his vehicles on Schedule J. Since the auto debts are included in Class 2 in the plan, these expenses are inappropriate. With the expenses deducted, the net income on Schedule J is \$416.01 but Debtor has proposed a plan payment of only \$228.00. Accordingly, Debtor is not paying all available income into the plan and the plan is not proposed in good faith. 11 U.S.C. § 1325(a)(3).

Although the Debtor filed a response stating that the 2017 Nissan Rogue and 2014 Toyota Scion will be paid in full and that he is in the process of obtaining the payoff amount on the Toyota Scion, the Debtor does not explain how he will subsequently pay his available income into the plan.

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.

3. [21-20046](#)-B-13 MOHAMMAD/SABA CHOUDHRY MOTION TO CONFIRM PLAN
[BSH](#)-1 Brian S. Haddix 4-29-21 [[38](#)]

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.

4. [17-26167](#)-B-13 GUSTAVO GONZALEZ
[RWF](#)-1 Robert W. Fong

MOTION TO WAIVE SECTION 1328
CERTIFICATE REQUIREMENT, AS TO
DEBTOR
5-4-21 [[21](#)]

Final Ruling

The motion has been set for hearing on the 28-days' notice required by 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion.

The Debtor passed away on February 27, 2021. Prior to his death, the Debtor completed his plan payments. However, the Debtor is unable to complete and file the remaining documents required by Local Bankruptcy Rule 5009-1. Nonetheless, it appears from the electronic record that the Debtor has not received a prior discharge with the time periods specified in 11 U.S.C. § 1328(f), the Debtor had no outstanding domestic support obligations, and the Debtor did not owe obligations of the type described in 11 U.S.C. § 522(q). The Debtor is waived from the requirement of filing a certificate pursuant to 11 U.S.C. § 1328 and a discharge shall be issued.

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

The court will issue an order.

5. [21-20969](#)-B-13 ALFEDO/MARTHA ALEGRIA
[RDG-1](#) Nikhil Bhatnagar

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
5-12-21 [[22](#)]

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 failed to appear at their first meeting of creditors and also failed to provide confirmation of identity and social security numbers. The meeting of creditors was continued to May 26, 2021, but there is no indication on the court's docket as to whether Debtors appeared or if it was concluded.

Second, Debtors have not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed or a written statement that no such documentation exists. The Debtors have not complied with 11 U.S.C. § 521(e)(2)(A)(I).

Third, Debtors have 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).

Fourth, Debtors plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtors' proposed plan payment is \$738.00 per month but they have a net income of -\$2,059.87. Debtors' Schedule D lists a secured claim for Freedom Mortgage in the amount of \$280,000.00 but the proposed plan does not provide for this secured claim. Debtors' plan provides for First Tech Credit Union as a Class 2 claim with a secured amount of \$0.00 but this creditor filed proof of claim no. 7-1 with a secured amount of \$57,667.41.

The plan filed March 18, 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.

6. [21-20384](#)-B-13 RAYFORD/REGINA GRIFFIN MOTION TO CONFIRM PLAN
[BSH](#)-1 Brian S. Haddix 4-30-21 [[33](#)]

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 court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to deny the motion to confirm as moot and overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed a new modified plan on June 4, 2021. The confirmation hearing for the modified plan is scheduled for July 13, 2021. The earlier plan filed April 30, 2021, is not confirmed.

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

The court will issue an order.