

**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 20, 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
Modesto, California

June 20, 2023 at 1:00 p.m.

1. [21-90109](#)-B-13 MARK ESCALANTE MOTION TO SELL
 [TAM](#)-3 Thomas A. Moore 5-17-23 [[60](#)]

Final Ruling

The case having been dismissed on June 9, 2023, the motion to sell is denied as moot.

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

The court will issue an order.

June 20, 2023 at 1:00 p.m.

2. [23-90053](#)-B-13 CESAR GARCIA TAPIA
Sidney C. Flores

OBJECTION TO CLAIM OF INTERNAL
REVENUE SERVICE, CLAIM NUMBER 2
4-7-23 [[36](#)]

Final Ruling

The Debtor has failed to use the Official Certificate of Service Form required by Local Bankr. R. 7005-1. This form is mandatory for attorneys and trustees as of November 1, 2022. Accordingly, the objection to claim of Internal Revenue Service is overruled without prejudice.

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

The court will issue an order.

3. [22-90379](#)-B-13 JAMES MAHONEY MOTION TO CONFIRM PLAN
[DCJ](#)-3 David C. Johnston 5-8-23 [[45](#)]

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.

All sums required by the plan have not been paid and the Debtor may not be able or willing to make the plan payments based on the current delinquency under the pending plan. 11 U.S.C. § 1325(a)(2), 11 U.S.C. § 1325(a)(6). The plan provides for payments of \$4,550.00 a month for 12 months. The Debtor is \$3,031.00 delinquent in plan payments to the Chapter 13 Trustee through May 25, 2023. The Debtor has paid \$28,819.00 into the plan to date.

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 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 confirm the second amended plan.

The Chapter 13 Trustee objects to confirmation on grounds that the Debtor has insufficient income to fund the plan.

The Debtor filed a response stating that he has filed amended schedules showing sufficient income to fund the plan, a declaration from Debtor's significant other indicating her willingness to contribute \$1,920.00 per month toward plan payments, has provided the Trustee with profit and loss statements for January through May 2023, and agrees to provide the Trustee with copies of all tax returns on or before April 30 of each year.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, 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.

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 not permit the requested modification and not confirm the modified plan.

First, all sums required by the plan have not been paid. 11 U.S.C. § 1325(a)(2). Debtor has failed to make the payments proposed in the plan and is delinquent \$1,611.49 under the proposed plan. Section 7 Nonstandard Provisions of Debtor's plan provides for plan payments of \$1,611.49 per month for months 25-60 (May 2023 through April 2026). Records indicate that the Debtor failed to make a plan payment in May 2023.

Second, the Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtor's plan proposes to reclassify the Class 1 claim of Select Portfolio Servicing Inc. to be paid outside of the plan as a Class 4 claim. Debtor states in his declaration that he anticipates being approved for relief under the California Relief Program. Until the Debtor receives approval and Select Portfolio Servicing Inc. files an amended proof of claim or the debtor successfully objects to the claim filed by Select Portfolio Servicing Inc., the plan not feasible.

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.