

**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: July 11, 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

July 11, 2023 at 1:00 p.m.

1. [22-90101](#)-B-13 PAMELA PELL MOTION TO MODIFY PLAN
[SSH](#)-1 Simran Singh Hundal 5-17-23 [[22](#)]

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.

Debtor's plan fails the liquidation test of 11 U.S.C. §1325(a)(4). Debtor's schedules list non-exempt assets totaling \$4,478.07, and unsecured priority claims totaling \$0.00. Accordingly, there are non-exempt assets available for distribution to Debtor's general unsecured creditors of \$4,478.07.00. Based on Debtor's schedules, there are non-priority general unsecured claims totaling \$12,344.15. In order to meet the liquidation test of 11 U.S.C. § 1325(a)(4), Debtor's plan must pay 36.28% to general unsecured creditors. Debtor's plan provides for 7.38% dividend to general unsecured creditors and thus fails the liquidation test.

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.

July 11, 2023 at 1:00 p.m.

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2. [23-90105](#)-B-13 TRINIDAD RODRIGUEZ
[PGM](#)-1 Peter G. Macaluso

MOTION TO CONFIRM PLAN
5-26-23 [[26](#)]

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.

3. [23-90010](#)-B-13 MARIA NAVARRO
[TMO](#)-2 T. Mark O'Toole

CONTINUED MOTION TO CONFIRM
PLAN
4-20-23 [[34](#)]

Final Ruling

The court entered an order on June 27, 2023, confirming the first amended plan filed April 20, 2023. Dkt. 89. Therefore, the hearing on this matter is vacated.

The court will issue an order.

4. [19-91014](#)-B-13 SANDRA RODRIGUEZ
[EAT](#)-3 Brian S. Haddix

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
6-5-23 [[153](#)]

WELLS FARGO USA HOLDINGS,
INC. VS.

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 grant the motion for relief from automatic stay.

This motion for relief from stay relates back to a motion to compel filed by Wells Fargo USA Holdings, Inc. ("Movant"), which the court denied without prejudice on May 2, 2023. Dkt. 151. Movant now seeks relief from the automatic stay with respect to real property commonly known as 600 Summit Court, Modesto, California (the "Property"). Movant has provided the Declaration of O'Don V Reese to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Reese Declaration states that Ernesto Rodriguez and Maria Rodriguez executed the note which fully matured effective June 27, 2022. Borrower Maria Rodriguez had transferred an ownership interest in the Property to herself, Sandra Rodriguez, Ernesto Rodriguez, Jr., Otis Rodriguez, and Samson Rodriguez as tenants in common recorded August 14, 2017. Ernesto Rodriguez is deceased.

As of December 6 2022, there were post-petition arrears in the amount of \$6,264.27 for real property taxes and insurance advanced by Movant to protect itself, the Debtor, and estate from the loss of the Property. This amount is supported by proof of claim no. 4-1.¹

The Chapter 13 Trustee filed a response stating that Debtor's plan provides for Wells Fargo Bank, NA as a Class 2 claim in the amount of \$41,667.91 to be paid at 6.625% interest and a monthly dividend of \$924.02 in months 9 through 60. The Trustee has disbursed \$29,692.36 in principal and \$3,633.07 in interest to the claim through May 2023. The claim is in arrears \$924.02. The most recent payment in the amount of \$1,848.04 was disbursed on May 31, 2023.

According to Movant, Debtor's failure to comply with the terms of the stipulation, see dkt. 111, by failing to timely pay real property taxes, thereby requiring Movant to advance real property taxes and insurance, constitutes cause to terminate the automatic stay under 11 U.S.C. § 362(d)(1). The court agrees

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The request for relief from stay as to any non-filing co-debtor, who is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

¹Wells Fargo USA Holdings, Inc. filed proof of claim no. 2-1 in the secured amount of \$41,677.91. Proof of claim 4-1 was not marked as amended or supplemental.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

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

The court will issue an order.

5. [22-90223](#)-B-13 ALEO PONTILLO
[RDG](#)-4 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
6-9-23 [[68](#)]

Final Ruling

This matter was continued from June 27, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, June 30, 2023. Debtor filed a response and a third amended plan with a scheduled confirmation hearing date of August 15, 2023, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 72 and the continued hearing on July 11, 2023, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

6. [23-90144](#)-B-13 KENNETH/BRENDA ROBY
[RDG](#)-1 Mark S. Nelson

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-6-23 [[15](#)]

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.

Based on Debtors' schedules, the projected disposable income available to be applied to make payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B) is \$13,307.05 for 60 months, or \$798,423.00. Debtors' plan and schedules list a total of \$71,480.00 in general unsecured debt. Therefore, Debtors can pay a 100% dividend to the general unsecured creditors. However, their plan provides for a 0% distribution to general unsecured creditors and thus fails to comply with 11 U.S.C. § 1325(b)(1)(B).

The plan filed April 6, 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. [22-90353](#)-B-13 KELLY SEARS
[RDG](#)-3 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
6-9-23 [[73](#)]

Final Ruling

This matter was continued from June 27, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, June 30, 2023. Debtor filed a response and a second amended plan with a scheduled confirmation hearing date of August 15, 2023, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 77 and the continued hearing on July 11, 2023, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

8. [23-90170](#)-B-13 TRINADAD/ANGELICA
[RDG](#)-1 GONZALEZ
Thomas P. Hogan

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-5-23 [[15](#)]

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 April 19, 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.

9. [23-90078](#)-B-13 JUAN ZUNIGA
[CSL](#)-1 Christie S. Lee

MOTION TO CONFIRM PLAN
6-2-23 [[24](#)]

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 amended plan.

Debtor's Schedule F lists unsecured claims for the Internal Revenue Service for the tax years ending 2009, 2010, and 2012 through 2015 in the total amount of \$38,700.00. Debtor's Schedule E lists a priority claim for the Internal Revenue Service for the tax year ending 2016 in the amount of \$9,150.00. However, the Internal Revenue Service has filed an amended proof of claim no. 1-3 listing a secured portion of \$13,876.11 for the tax periods of 2009, 2010, and 2012. Debtor's plan does not list this claim. Debtor's Amended Schedule J and Statement of Financial Affairs are silent as to treatment of this creditor. It is unclear whether this creditor is to be paid and, if it is to be paid, how it is to be paid. This impacts whether Debtor will be able to make all payments under the plan and comply with the plan. 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.

10. [22-90480](#)-B-13 KEVIN NGUYEN
[SSH](#)-1 Simran Singh Hundal

MOTION TO CONFIRM PLAN
5-17-23 [[29](#)]

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.

11. [22-90095](#)-B-13 CHERYL PORTER CONTINUED MOTION TO DISMISS
[RDG](#)-4 SCHIMMELFENNIG CASE
Gordon G. Bones 6-9-23 [[119](#)]

Final Ruling

This matter was continued from June 27, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, June 30, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 123, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on July 11, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dkt. 123.

The court will issue an order.