

**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 12, 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.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

July 12, 2022 at 1:00 p.m.

1. [22-90016](#)-B-13 ALEO PONTILLO MOTION TO CONFIRM PLAN
 [DCJ](#)-1 David C. Johnston 5-25-22 [[40](#)]

DEBTOR DISMISSED: 06/28/22

Final Ruling

No appearance at the July 12, 2022, hearing is required. The case was dismissed on June 28, 2022. The motion is denied as moot.

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

The court will issue an order.

2. [21-90185](#)-B-13 GUILLERMO/CYNTHIA
[LBF](#)-1 BANUELOS
Lauren Franzella

MOTION TO MODIFY PLAN
5-31-22 [[30](#)]

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 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). Oppositions were 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.

First, the plan does not have sufficient monies to pay the claim of Ally Financial in full. Debtor contends that Ally is to be paid \$40,000.00 per stipulation but Ally has filed a poof of claim with a secured amount of \$44,810.61.¹ No stipulation has been filed between Debtor and the creditor.² The Debtor cannot comply with the plan. 11 U.S.C. § 1325(a)(6).

Second, the proposed monthly plan payments are insufficient to cover payments to creditors and the Chapter 13 Trustee. The plan proposes a payment of \$750.00 in month 1 but must be \$835.71 per month in order to cover payments to creditors and the Chapter 13 Trustee. The plan is not feasible. 11 U.S.C. § 1325(a)(6).

Third, feasibility of the plan depends on the outcome of *Lionudakis et al v. Pimentel-Montez*, adversary no. 20-09012, which will be tried on August 22, 2022.

Fourth, the Debtor has not established that the plan is filed in good faith and the objection filed by Phillip Lionudakis, *et al.*, dkt. 41, makes a very compelling argument that the plan is indeed not filed in good faith. See 11 U.S.C. § 1325(a)(3).

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.

¹The plan refers to a "stipulation." See dkt. 32 at 4, § 3.08(d).

²Debtor's attorney states that some time before the March 1, 2022, initial plan confirmation hearing he reached an agreement with Ally regarding valuation of Ally's secured claim and immediately thereafter was stricken with COVID-19 for a second time rendering him unable to work for more than three weeks. See dkt. 29 at 1:21-2:1. Debtor's attorney also states the court was not aware of the Debtor's purported agreement with Ally because confirmation of the Debtor's patently-defective initial plan was denied without the need for a hearing. *Id.* Even if a hearing was held, Debtor's attorney fails to explain how he could have appeared to inform the court of the purported agreement if he was unable work. Debtor's attorney also waited nearly three months after confirmation of the initial plan was denied to reference the purported agreement for the first time in the present motion to confirm. And in the four months since confirmation of the initial plan was denied, Debtor's attorney has not filed any stipulation or other document that reflects an agreement with Ally.