

**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 16, 2024

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 16, 2024 at 1:00 p.m.

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1. [24-90205](#)-B-13 THERESA/GUADALUPE SOLIS OBJECTION TO CONFIRMATION OF
[LGT](#)-1 David S. Henshaw PLAN BY LILIAN G. TSANG
6-26-24 [[16](#)]

Final Ruling

The *initial* Chapter 13 Plan filed April 18, 2024, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to August 6, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Debtors have failed to provide the Trustee with 60-days proof of income for Debtor Theresa Solis as required by 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankr. R. 1007-1. Without these documents, it cannot be determine whether Debtors' plan is feasible and pays all projected disposable income for the applicable commitment period to general unsecured creditors. 11 U.S.C. §§ 1325(a)(6), (b)(1).

Second, Debtors and Debtors' attorney have filed a Rights & Responsibilities indicating that payments of attorney fees are to be made pursuant to Local Bankruptcy Rule 2016-1(C) or Debtors' Plan. However, no box has been checked in Section 3.05 of the plan. Therefore, pursuant to Local Bankr. R. 2016-1, Debtors' attorney defaulted to opting-out of the flat fees.

Third, amended Schedules are required to be filed including Schedule D to list the mortgage creditor on Debtors' primary residence and a current statement for the mortgage loan, Schedule C to list an exemption code for miscellaneous jewelry, and Schedule I to account for co-Debtor Guadalupe Solis' 401K loan repayment payroll deduction, Debtor Theresa Solis' employer's name and address, and the occupation and length of employment for both Debtors. Without the amended schedules, the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

Fourth, complete copies of Debtors' 2022 and 2023 federal and state income tax returns are required. Without this information, it cannot be determined whether Debtor's plan is feasible under 11 U.S.C. § 1325(a)(6).

The plan filed April 18, 2024, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), party in interest shall have until 5:00 p.m. on July 19, 2024, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtors, the Debtors' attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained for

July 16, 2024 at 1:00 p.m.

Page 1 of 13

the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on August 6, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on August 6, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED for reasons stated in the minutes.

The court will issue an order.

- CONTINUED TO 8/06/24 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 7/24/24.

No appearance at the July 16, 2024, hearing is required. The court will issue an order.

- CONTINUED TO 8/06/24 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 7/24/24.

No appearance at the July 16, 2024, hearing is required. The court will issue an order.

4. [24-90221](#)-B-13 HARLEY WATERS
[LGT](#)-1 David C. Johnston

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
6-17-24 [[26](#)]

Final Ruling

The *initial* Chapter 13 Plan filed May 14, 2024, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to August 6, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Debtor has failed to provide the Chapter 13 Trustee various information including Non-Filing Spouse's pay advices for 60 days prior to filing, business questionnaire, Bank of America personal bank statements dated 11/1/2023 to 12/12/2023, Bank of America business bank statements for November through December 2023, BMO Bank Statements for November through December 2023, profit and loss statements broken down by month for November 2023 through April 2024, inventory and equipment list with values, balance sheet and monthly cash flow statement, accounts receivables, and Schedule I 8a attachment.

Second, Section 3.05 of the plan provides \$4,000.00 was paid prior to filing and \$0.00 are to be paid in the plan. Pursuant to Local Bankruptcy Rule 2016-1(c)(3)(A), attorneys shall not seek, nor accept, a retainer greater than the sum of 25% of the fee specified. The retainer accepted exceeds 25% of the total fees charged in this case.

The plan filed May 14, 2024, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Additionally, attorney David C. Johnston is ORDERED to return \$3,000.00 to the Debtor and file certification with the court that \$3,000.00 has been returned to the Debtor by July 19, 2024. Failure to comply may result in sanctions for violation of Local Bankr. R. 2016-1(c)(3)(A) which may include, but are not limited to, disgorgement of all attorney's fees. THIS ORDER IS NOT CONDITIONAL AND IS NOT SUBJECT TO THE CONDITIONAL PROVISION BELOW.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), party in interest shall have until 5:00 p.m. on July 19, 2024, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtor, the Debtors' attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on August 6, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on August 6, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED for reasons stated in the minutes.

The court will issue an order.

5. [24-90122](#)-B-13 MATTHEW/NICOLE STETLER MOTION TO CONFIRM PLAN
[PLG](#)-2 Rabin Pournazarian 6-3-24 [[39](#)]

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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

6. [24-90232](#)-B-13 JESSI LAMANUZZI
[LGT](#)-1 Chad M. Johnson

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
6-17-24 [[15](#)]

CONTINUED TO 8/06/24 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED
MEETING OF CREDITORS SET FOR 7/24/24.

Final Ruling

No appearance at the July 16, 2024, hearing is required. The court will issue an
order.

7. [24-90234](#)-B-13 FABRICIO VASQUEZ OBJECTION TO CONFIRMATION OF
[AP-1](#) David C. Johnston PLAN BY NATIONSTAR MORTGAGE LLC
Thru #9 6-28-24 [[28](#)]

CONTINUED TO 9/24/24 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 9/18/24.

Final Ruling

No appearance at the July 16, 2024, hearing is required. The court will issue an order.

8. [24-90234](#)-B-13 FABRICIO VASQUEZ OBJECTION TO CONFIRMATION OF
[LGT-1](#) David C. Johnston PLAN BY LILIAN G. TSANG
6-28-24 [[32](#)]

CONTINUED TO 9/24/24 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 9/18/24.

Final Ruling

No appearance at the July 16, 2024, hearing is required. The court will issue an order.

9. [24-90234](#)-B-13 FABRICIO VASQUEZ OBJECTION TO CONFIRMATION OF
[PPR-1](#) David C. Johnston PLAN BY BMO BANK, N.A.
6-14-24 [[23](#)]

CONTINUED TO 9/24/24 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 9/18/24.

Final Ruling

No appearance at the July 16, 2024, hearing is required. The court will issue an order.

Final Ruling

The *initial* Chapter 13 Plan filed May 16, 2024, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to August 6, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Debtor has failed to provide the Chapter 13 Trustee with Business Documents including six months of profit and loss statements and copies of Debtor's liability riders and workers' compensation riders, if applicable, for Debtor's business. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These were required 7 days before the date set for the first meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(I).

Second, Debtor has failed to provide the Trustee with complete copies of Debtor's 2023 federal and state income tax returns. Until these tax returns are provided, it cannot be determined whether the Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to general unsecured creditors. 11 U.S.C. § 1325(a)(6), (b)(1).

Third, the attachment to Schedule I which provides for Debtor's business income and expenses needs to be filed. Without this document, it cannot be determined whether Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. §§ 1325(a)(6), (b)(1).

Fourth, the plan provides for attorney fees in the amount of \$4,000.00 of which \$1,687.00 was paid prior to filing. Debtor's Statement of Financial Affairs states that \$1,687.00 was paid toward attorney fees. Pursuant to Local Bankruptcy Rule 2016-1(c)(3)(A), attorneys shall not seek, nor accept, a retainer greater than the sum of 25% of the fee specified. The retainer accepted exceeds 25% of the total fees charged in the case.

The plan filed May 16, 2024, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Additionally, attorney David C. Johnston is ORDERED to return \$687.00 to the Debtor and file certification with the court that \$687.00 has been returned to the Debtor by July 19, 2024. Failure to comply may result in sanctions for violation of Local Bankr. R. 2016-1(c)(3)(A) which may include, but are not limited to, disgorgement of all attorney's fees. THIS ORDER IS NOT CONDITIONAL AND IS NOT SUBJECT TO THE CONDITIONAL PROVISION BELOW.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), party in interest shall have until 5:00 p.m. on July 19, 2024, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtor, the Debtors' attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on August 6, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on August

6, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED for reasons stated in the minutes.

The court will issue an order.

11. [24-90239](#)-B-13 CRAIG/HEATHER WATTERS
[CJK](#)-1 Mary D. Anderson

OBJECTION TO CONFIRMATION OF
PLAN BY MLD MORTGAGE INC.
6-28-24 [[31](#)]

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). A 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 overrule the objection and deny confirmation of the plan.

Objecting creditor MLD Mortgage Inc. ("Creditor") holds a deed of trust secured by the Debtor's residence. Creditor objects to plan confirmation on grounds that it does not provide for its pre-petition arrears and is incorrectly classified in Class 4. Creditor asserts \$9,282.18 in pre-petition arrears but has not yet filed a proof of claim, and has provided no evidence to support the amount of claimed pre-petition arrears. The creditor does not provide a declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

There being no other objection, the plan is deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed May 18, 2024, is confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

12. [22-90157](#)-B-13 OSCAR/SANDRA LOPEZ
[LBF](#)-4 Lauren Franzella

OBJECTION TO CLAIM OF EVA C
MUNOZ, CLAIM NUMBER 11
5-3-24 [[105](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant 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 overrule the objection to Claim No. 11-1 of Eva C. Munoz.

Debtors Oscar Lopez and Sandra Lopez ("Debtors") request that the court disallow the claim of Eva C. Munoz ("Creditor"), Claim No. 11-1. The claim is asserted to be in the amount of \$27,543.06. Debtors assert that the claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was July 22, 2022. The Creditor's claim was filed March 26, 2024.

Creditor filed a response acknowledging that Claim No. 11-1 was not formally filed by the non-government unit deadline, but argues that its claim should be allowed because it filed a motion for relief from automatic stay that constitutes an amendable informal proof of claim. See *Matter of Pizza of Hawaii, Inc.*, 761 F.2d 1374, 1380-1382 (9th Cir. 1985) (where a complaint seeking relief from stay that attached documents requesting damages and fees from debtor constituted an informal proof of claim). See also *Pac. Res. Credit Union v. Fish (In re Fish)* 456 B.R. 413, 417 (9th Cir. BAP 2011) (motion for relief from automatic stay constituted an informal proof of claim).

Discussion

For a document to constitute an informal proof of claim, it must state an explicit demand showing the nature and amount of the claim against the estate, and evidence an intent to hold the debtor liable. *Id.* The requirements are: (1) presentment of a writing; (2) within the time for the filing of claims; (3) by or on behalf of the creditor; (4) bringing to the attention of the court; (5) the nature and amount of a claim asserted against the estate.

Creditor's motion for relief from the automatic stay filed June 13, 2022, constituted an informal proof of claim. The motion was (1) presented in writing filed with the bankruptcy court, (2) filed on June 13, 2022, which was within the time for filing a claim, (3) filed by Creditor, (4) brought to the attention of the bankruptcy court that a state court litigation was pending, and (5) the nature was to allow the state court litigation to proceed and for any damages and fees to be determined. The bankruptcy court granted the motion for relief from automatic stay and the litigation continued in state court. Any judgment obtained in state court was to be brought back to the bankruptcy court for the proper treatment of any claims under the Bankruptcy Code. See *dk. 31*, p. 2, para. 7.

For the aforementioned reasons, Creditor's Claim No. 11-1 shall be allowed given that the motion for relief from stay filed June 13 2022, met the requirements to be deemed an informal proof of claim. Debtors' objection to the proof of claim is overruled.

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

The court will issue an order.

13. [24-90060](#)-B-13 LUIS/ANGELA OLIVEIRA CONTINUED OBJECTION TO
[LGT](#)-1 David C. Johnston CONFIRMATION OF PLAN BY LILIAN
Thru #14 G. TSANG
3-26-24 [[24](#)]

CONTINUED TO 9/24/24 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 9/18/24.

Final Ruling

No appearance at the July 16, 2024, hearing is required. The court will issue an order.

14. [24-90060](#)-B-13 LUIS/ANGELA OLIVEIRA CONTINUED OBJECTION TO
[RAS](#)-1 David C. Johnston CONFIRMATION OF PLAN BY
DEUTSCHE BANK NATIONAL TRUST
COMPANY
3-12-24 [[21](#)]

CONTINUED TO 9/24/24 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 9/18/24.

Final Ruling

No appearance at the July 16, 2024, hearing is required. The court will issue an order.

15. [23-90371](#)-B-13 DANIEL/CRISTINA HERNANDEZ MOTION TO MODIFY PLAN
[LBF](#)-1 Lauren Franzella 5-24-24 [[28](#)]

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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.