

**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: 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
Sacramento, California

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

1. [22-21417](#)-B-13 ERIC HARDY MOTION TO MODIFY PLAN
[MS-2](#) Mark Shmorgon 6-10-24 [[58](#)]

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 Debtor has 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.

2. [24-21920](#)-B-13 RICARDO/SAMANTHA OBJECTION TO CONFIRMATION OF
 [LGT](#)-1 RODRIGUEZ PLAN BY LILIAN G. TSANG
 Charles L. Hastings 6-27-24 [[19](#)]

CONTINUED TO 8/06/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO ALLOW THE DEBTORS TO ADDRESS THE ISSUES RAISED IN THE CHAPTER 13 TRUSTEE'S SUPPLEMENTAL OBJECTION.

Final Ruling

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

3. [23-21527](#)-B-13 ANDRES VELEZ AND MICHELLE MOTION TO MODIFY PLAN
[MRL](#)-1 NESTROYL 5-17-24 [[36](#)]
Mikalalah Liviakis

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, feasibility is contingent upon the sale of Debtors' real property located at 460 French Bar Road, Jackson, California. There appears to be no pending motion to sell in Debtors' case. Until the court has entered an order granting the motion to sell, Debtors' plan is not feasible and is not proposed in good faith. 11 U.S.C. §§ 1325(a)(3), (a)(6).

Second, Debtor's plan fails to comply with 11 U.S.C. §§ 1322(b)(2) and (5), which provide that a plan may not modify the rights of a holder of a claim secured only by a security interest in real property that is the debtors' principal residence and must provide for the curing of any default within a reasonable time. The plan proposes an impermissible modification of the first mortgage on Debtors' principal residence, which is not permitted under 11 U.S.C. § 1322(b)(2). Additionally, the plan fails to provide for post-petition arrears of \$8,328.55 due through June 2024.

Third, Debtors' motion and declaration are silent as to their delinquency under their confirmed plan filed May 10, 2023. The confirmed plan provides for payments of \$2,089.00 per month for 29 months and \$2,499.00 per month for 31 months. Debtors are delinquent \$11,514.37 under the terms of their confirmed plan. The last payment was posted on June 10, 2024. 11 U.S.C. § 1325(a)(3).

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.

4. [23-24232](#)-B-13 MARIA CARRANZA
[ES-2](#) Eric L. Seyvertsen

OBJECTION TO NOTICE OF
POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
5-30-24 [[30](#)]

Final Ruling

The objection 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). 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 sustain the objection to post-petition fees.

Debtor objects to the fees claimed in the Notice of Postpetition Mortgage Fees, Expenses, and Charges filed by Freedom Mortgage Corporation ("Creditor") on April 17, 2024. Creditor seeks \$950.00 in post-petition fees without providing a duration or accounting of the fees. The claimed fees allegedly incurred were \$350.00 for plan review and \$600.00 for preparing a proof of claim. Creditor provides no indication for the time required for either task, such as the number of hours spent, or the hourly billing rate.

No response has been filed by Creditor.

This objection is a contested matter to the claim being asserted by Creditor. Federal Rule of Bankruptcy Procedure 3002.1(e) provides that, on motion of the debtor or trustee, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code. This contested matter is a core matter arising under Title 11, including 11 U.S.C. § 502. 28 U.S.C. § 157(b)(2)(A), (B), and (O).

The court has reviewed the Notices of Mortgage Payment Change filed August 11, 2016, and Claim No. 5 filed by Creditor. There is no evidence as to the time spent, billing rate, or reasonableness of the fees incurred for reviewing the plan, which lists Creditor's mortgage as a Class 4 claim, or preparing the proof of claim. The court finds no explanation as to how the Creditor computed its \$950.00 in fees. Moreover, the fees are excessive and unreasonable. See *In re Ochab*, 586 B.R. 803, 809-10 (Bankr. M.D. Ala. 2018) (\$400 charge for plan review and \$500 charge for preparing a proof of claim are excessive and unreasonable).

Based on the evidence before the court, the objection to the notice of postpetition mortgage fees, expenses, and charges is sustained.

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

The court will issue an order.

5. [24-21132](#)-B-13 CARLOS MARTINEZ MOTION TO CONFIRM PLAN
[ALT](#)-1 Alyssa Lynn Thompson 5-22-24 [[15](#)]

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. 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. [24-21632](#)-B-13 MARTIN VEGA
[LGT](#)-1 Arasto Farsad

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
6-17-24 [[13](#)]

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). Nonetheless, 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 overrule the objection as moot.

Subsequent to the filing of the Chapter 13 Trustee's objection, the Debtor filed an amended plan on June 19, 2024. The confirmation hearing for the amended plan is scheduled for August 13, 2024. The earlier plan filed April 21, 2024, is not confirmed.

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

The court will issue an order.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

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 grant the motion to sell.

The Bankruptcy Code permits Chapter 13 debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell property described as 1498 Monterey Court, Tracy, California ("Property").

Proposed purchasers Amelia Bevel and Tracey Bevel have agreed to purchase the Property for \$655,000. Debtor is selling her home because she obtained employment in Folsom and wishes to move closer to her work and pay off her debts. Selling the Property provides her a means to move closer to work and to get out of debt. Debtor's Chapter 13 plan provides for payment of secured creditors with allowed general unsecured creditors receiving approximately 7% of their claims. Debtor will turn over net proceeds of \$50,000 from the sale of the Property to the Trustee, or the amount necessary to pay off the plan.

The Chapter 13 Trustee filed an opposition stating that the Debtor has provided no evidence that the proposed sale is an arm's length transaction and requesting further information as to what a \$10,000 debit represents in the Estimated Closing Statement.

Debtor filed a declaration stating that the sale is an arm's length transaction since she did not know the buyers until they made their offer, and that the \$10,000 is a payment to the Trustee at the close of escrow to pay the plan at 100% and sooner than the commitment period.

The Trustee did not file any reply to the Debtor's declaration.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate. The motion is granted.

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

Debtor's attorney shall submit an order consistent with the Trustee's standard sale language. The order shall be approved by the Trustee.

8. [24-21946](#)-B-13 DANA BUCKINGHAM OBJECTION TO CONFIRMATION OF
 [LGT](#)-1 T. Mark O'Toole PLAN BY LILIAN G. TSANG
 6-28-24 [[19](#)]

CONTINUED TO 8/06/24 AT 1:00 P.M. AT SACRAMENTO 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.

9. [24-21683](#)-B-13 LUISITO/LILIA MAGNAYE OBJECTION TO CONFIRMATION OF
[LGT](#)-1 Flor De Maria A. Tataje PLAN BY LILIAN G. TSANG
6-17-24 [[20](#)]

WITHDRAWN BY M.P.

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.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

10. [24-21686](#)-B-13 JAYESH PATEL OBJECTION TO CONFIRMATION OF
HR-2 David C. Johnston PLAN BY ALLEN DREFS
Thru #11 6-19-24 [[30](#)]

Final Ruling

The objection to confirmation of plan by the Chapter 13 Trustee having been sustained at Item #11, LGT-1, the objection to confirmation of plan by Allen Drefs is overruled as moot.

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

The court will issue an order.

11. [24-21686](#)-B-13 JAYESH PATEL OBJECTION TO CONFIRMATION OF
[LGT-1](#) David C. Johnston PLAN BY LILIAN G. TSANG
6-26-24 [[35](#)]

Final Ruling

The *initial* Chapter 13 Plan filed May 12, 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 Trustee with Business Documents including: 6 months of profit and loss statements, Business Case Questionnaires, 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); FRBP 4002(b)(3). These are required 7 days before the date set for the first meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(i).

Second, the plan provides for attorney fees in the amount of \$6,313.00 to be paid at a monthly dividend of \$175.00. Pursuant to Local Bankruptcy Rule 2016-1(c)(4)(B), the payment flat fees must be paid in equal monthly installments over the term of the plan. Debtor's plan is a 36-month plan. A monthly dividend of \$175.36 is necessary to pay the claim in full within Debtor's 36-month plan term.

Third, Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6). The attachment to Schedule I, which provides for Debtor's business income and expenses, needs to be filed. Also Section 2.01 of Debtor's plan provides for plan payments of \$750.00 for 36 months. Debtor has failed to provide admissible evidence that their plan is mathematically feasible. Trustee's calculations indicate that Debtor's plan payment will need to be at least \$812.00 in order for Debtor's plan to be feasible.

Fourth, Debtor's plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtor's Schedule A/B fails to list Debtor's business assets, inventory and/or equipment. Also Debtor's Schedule A/B at #30 lists a long-term note and deed of trust valued at \$20,000.00. A copy of the note, deed of trust, and a detailed explanation as to how this value was determined must be provided.

Fifth, the petition needs to be amended to include Debtor's middle name.

The plan filed May 12, 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 Debtor, the Debtor's 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.

12. [23-21491](#)-B-13 LINDA SAEFONG AND KAO MOTION TO MODIFY PLAN
[MC-4](#) SAEPHAN 6-14-24 [[62](#)]
Muoi Chea

CONTINUED TO 8/13/2024 AT 1:00 P.M. AT SACRAMENTO COURTROOM PER AMENDED NOTICE OF HEARING.

Final Ruling

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

13. [24-21893](#)-B-13 LUCINDA/HENRY COLEMAN OBJECTION TO CONFIRMATION OF
[LGT](#)-1 Le'Roy Roberson PLAN BY LILIAN G. TSANG
6-17-24 [[16](#)]

CONTINUED TO 8/13/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 8/07/24.

Final Ruling

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

14. [24-21495](#)-B-13 JOSEPH/JAMEELA BROWN
[LGT](#)-1 Seth L. Hanson

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LILIAN
G. TSANG
6-5-24 [[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). Nonetheless, 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 overrule the objection as moot.

Subsequent to the filing of the Chapter 13 Trustee's objection, the Debtors filed an amended plan on July 1, 2024. The confirmation hearing for the amended plan is scheduled for August 20, 2024. The earlier plan filed April 11, 2024, is not confirmed.

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

The court will issue an order.

15. [24-22700](#)-B-13 NATALIE PELTON
[RJ-1](#) Richard L. Jare

CONTINUED MOTION TO VALUE
COLLATERAL OF EXETER FINANCE
LLC
6-25-24 [[12](#)]

Final Ruling

This matter was continued from July 9, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, July 12, 2024. Exeter Finance LLF filed a response and submitted as an exhibit a J.D. Power Guide report that shows a clean retail amount adjusted downward for milage for a total value of \$22,325.00. Exeter's request to inspect the Debtor's vehicle, its collateral, is **GRANTED**. The Debtor is **ORDERED** to make the vehicle available to Exeter and/or its representative or agent for inspection and appraisal at a mutually-agreeable time and location. Exeter shall bear its costs associated with inspection and appraisal of the vehicle.

The continued hearing on July 16, 2024, at 1:00 p.m. is further **CONTINUED** to **August 13, 2024, at 1:00 p.m.** Any supplemental evidence of value or appraisal from either party shall be filed and served by **August 6, 2024**.

The court will issue an order.