

**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: August 9, 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

August 9, 2022 at 1:00 p.m.

1. [18-90512](#)-B-13 KEVIN/MARIA SMITH MOTION TO INCUR DEBT
[MSN](#)-2 Mark S. Nelson 6-22-22 [[43](#)]
Thru #2

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 to incur debt.

Debtors Kevin Smith and Maria Smith ("Debtors") seek permission to purchase real property commonly known as 296 Milltown Drive, Pendleton, Indiana, the total purchase price of which is \$332,255.00, with a total monthly mortgage payment of \$2,273.00. Debtors' out of pocket estimated closing costs will be \$11,550.00. The Debtors have made \$3,000.00 in earnest deposits. Their ability to make the earnest deposits and remaining out-of-pocket down payments comes from extra work the Debtor has done this year, the sale of their real property in La Grange, California, and their 2021 federal and state tax refunds totaling \$2,242.00.

Debtors seek to move out of California because housing is out of their price range. Debtors currently pay \$1,700.00 per month for rent and this amount may increase any time. Additionally, Debtors' adopted son has special needs and his sister lives in the Indianapolis area. Moving there will allow the son to be closer to his sister, who will look after him as the Debtors age.

Debtors contend that they will continue to make monthly plan payments for the remaining term of their 60-month plan and will complete the plan within the original term. Debtors have filed concurrently a motion to modify plan that shows their ability to make monthly plan payments and the new mortgage.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances

August 9, 2022 at 1:00 p.m.

of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

The court will issue an order.

2. [18-90512](#)-B-13 KEVIN/MARIA SMITH MOTION TO MODIFY PLAN
[MSN](#)-3 Mark S. Nelson 6-22-22 [[48](#)]

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.

3. [22-90137](#)-B-13 KIMBERLY DAVIS
[WLG](#)-1 Michael T. Reid

MOTION TO CONFIRM PLAN
6-13-22 [[14](#)]

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.

4. [22-90153](#)-B-13 DIANE DOKKHAM
[RDG](#)-1 Carl R. Gustafson

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-11-22 [[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 July 19, 2022. The confirmation hearing for the amended plan is scheduled for August 23, 2022. The earlier plan filed May 12, 2022, is not confirmed.

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

The court will issue an order.

5. [22-90157](#)-B-13 OSCAR/SANDRA LOPEZ
[RDG](#)-1 Lauren Franzella

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D GREER
7-12-22 [[25](#)]

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)(2) 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 May 13, 2022, 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.

6. [22-90166](#)-B-13 MICHELLE MOTION TO CONFIRM PLAN
[TAA](#)-1 NIGHTENGALE-PERRY AND 7-7-22 [[16](#)]
Lauren Franzella

Final Ruling

The motion was not 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). Only 33 days of notice was provided. Therefore, the motion to confirm is denied without prejudice.

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

The court will issue an order.

7. [22-90172](#)-B-13 ALBERT/SHANNON PEREZ
[RDG](#)-1 Lauren Franzella

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-12-22 [[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). 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 sustain the objection and deny confirmation of the plan.

Debtors' Schedule I at Line 5(h) indicates a deduction of \$709.50 monthly as vacation funds. Line 8(h) on Schedule I adds in \$81.13 as vacation fund issued each February. At the 341 meeting of creditors, Debtors testified that the deduction is mandatory and that the amounts collected minus taxes are returned to the Debtor at the end of the year. Debtors have estimated that the amount they receive is approximately 60% of the amount collected, or \$425.70 per month. The Chapter 13 Trustee requested an amended Schedule I to more accurately reflect the average monthly income received. Until Debtors amend their schedule I, it cannot be determined if Debtors' plan is feasible and complies with 11 U.S.C. §1325(b).

Debtors filed a response on August 2, 2022, stating that an amended plan and amended Schedules I and J will be filed prior to the August 9, 2022, hearing. See dkt. 22. Nothing has been filed.

The plan filed May 24, 2022, 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.

8. [20-90477](#)-B-13 CARLOS/ANDREA PERALES
[MSN](#)-2 Mark S. Nelson
Thru #11

MOTION TO SUBSTITUTE PARTY, AS
TO DEBTOR
6-16-22 [[37](#)]

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 substitute Joint Debtor Andrea Perales to continue administration of the case.

Joint Debtor Andrea Perales gives notice of the death of her husband Debtor Carlos Perales and requests the court to substitute Andrea Perales in place of Carlos Perales for all purposes within this Chapter 13 proceeding.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

- 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];
- 2) Continued administration of a case under chapter 11, 12, or 13 (Fed. R. Bankr. P. 1016);
- 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications (11 U.S.C. § 1328).

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Andrea Perales for Carlos Perales. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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

The court will issue an order.

9. [20-90477](#)-B-13 CARLOS/ANDREA PERALES
[MSN](#)-3 Mark S. Nelson

MOTION TO WAIVE FINANCIAL
MANAGEMENT COURSE
REQUIREMENT, WAIVE SECTION 1328
CERTIFICATE
REQUIREMENT, CONTINUE CASE
ADMINISTRATION, AS TO DEBTOR
6-16-22 [[42](#)]

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 waive the deceased Debtor's certification otherwise required for entry of a discharge.

Joint Debtor Andrea Perales gives notice of the death of her husband Debtor Carlos Perales and requests the court to waive the § 1328 and financial management requirements for Carlos Perales.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

- 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];
- 2) Continued administration of a case under chapter 11, 12, or 13 (Fed. R. Bankr. P. 1016);
- 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications (11 U.S.C. § 1328).

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to waive the § 1328 and financial management requirements for Carlos Perales. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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

The court will issue an order.

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 hardship discharge.

Joint Debtor Andrea Perales requests that the court grant a hardship discharge after the passing of her husband, Debtor Carlos Perales, since she is unable to complete plan payments with the loss of her husband's monthly income. The Debtors' monthly household income was \$7,614.28 but has been reduced to \$6,409.50. Joint Debtor's monthly living expenses have increased from \$6,013.00 to \$6,403.00 due to the increased cost of living from gas, food, and utilities. Joint Debtor will also be losing \$225.00 per month in child support when one of her children turns 18 in September 2022. She is now left to solely care for their 5 children, all under the age of 17.

Joint Debtor will be receiving life insurance that is equal to only approximately 3.33 years of her husband's gross income. Although both Debtor and Joint Debtor have retirement accounts, Joint Debtor is not eligible for the monthly spousal benefits because her husband was not of retirement age when he passed away. Joint Debtor will have to wait until she is of retirement age to be eligible for the monthly benefits or she will be penalized 20%; she is only 41 years old. Joint Debtor will be receiving survivor benefits for the children in the amount of \$729.93 per month.

Concurrently filed with this motion is a motion to modify plan. The modified plan proposes to pay a lump sum payment of \$32,000.00 with funds from Debtor's life insurance to pay a 56% dividend to the filed and allowed general unsecured creditors so the plan passes the chapter 7 liquidation test. The life insurance proceeds she will have left after paying \$32,000.00 into the plan will be barely enough to help support her and her children until she can draw, without penalties and taxes, from Debtor's retirements. Accordingly, Joint Debtor will be supporting a household of 6 solely on her employment income of \$3,942.37 and the \$728.93 of survivor benefits she will be receiving monthly.

Discussion

After confirmation of a plan, circumstances may arise that prevent a debtor from completing a plan of reorganization. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if: (b)(1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (b)(2) creditors have received at least as much as they would have received in a chapter 7 liquidation case; and (b)(3) modification of the plan is not possible under 11 U.S.C. § 1329. 11 U.S.C. § 1328(b)(1)-(3).

Here, the Debtor has satisfied 11 U.S.C. § 1328(b)(1)-(3). First, Joint Debtor's failure to complete plan payments is due to circumstances beyond her control - the death of her 41-year-old husband due to cancer. Second, creditors in this chapter 13 will receive \$32,000.00, which is at least as much as they would have received in a chapter 7 liquidation case. Lastly, modification of the plan is not possible because Joint Debtor would not be able to make plan payments because her disposable income is nil with the loss of her husband's income. Joint Debtor's income has, and will continue, to be reduced since she is no longer able to be on standby for work because there is no longer an adult at home to watch the younger children.

The court grants the motion and the clerk of the court shall issue a discharge pursuant to 11 U.S.C. § 1328(b).

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

The court will issue an order.

11. [20-90477](#)-B-13 CARLOS/ANDREA PERALES MOTION TO MODIFY PLAN
[MSN](#)-5 Mark S. Nelson 6-16-22 [[53](#)]

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 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.

12. [20-90195](#)-B-13 TONY ARELLANO
[TLC](#)-2 Tamie L. Cummins

MOTION TO MODIFY PLAN
6-30-22 [[39](#)]

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. 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.

13. [22-90095](#)-B-13 CHERYL PORTER
SCHIMMELFENNIG
Gordon G. Bones
OBJECTION TO CLAIM OF
SPECIALIZED LOAN SERVICE, CLAIM
NUMBER 1
7-6-22 [[49](#)]

Final Ruling

No appearance at the August 9, 2022, hearing is required. The parties have stipulated to continue the matter to September 13, 2022, at 1:00 p.m.

The court will issue an order.